

**REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA**

**A REVIEW OF THE MANAGEMENT PRACTICES
AND FINANCIAL OPERATIONS OF THE
RIVERSIDE COMMUNITY COLLEGE DISTRICT**

**A Review of the Management Practices
and Financial Operations of the
Riverside Community College District**

F-019, June 1991

**Office of the Auditor General
California**



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F-019

Honorable Robert J. Campbell, Chairman
Members, Joint Legislative Audit Committee
State Capitol, Room 2163
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the management practices and financial operations of the Riverside Community College District. The report indicates a need for the Riverside Community College District to provide appropriate control over the development of its property and to improve its controls over financial operations.

Respectfully submitted,

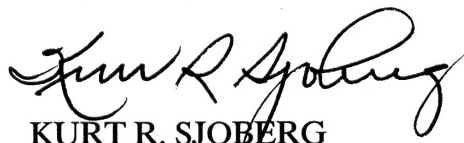

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Summary

Results in Brief The management practices and accounting procedures of the Riverside Community College District (district) do not always provide the district with appropriate controls over its property and financial operations. During our audit of the district, we noted the following conditions:

- Based on an opinion we received from the Legislative Counsel, we conclude that the district has improperly delegated its responsibility to control and manage its real property under a lease arrangement that is subject to legal challenges and may not protect the best interests of the district;
- The district did not obtain competitive bids for a \$135,200 installation of communications equipment and for \$248,700 in purchases of computer equipment. As a result, it cannot ensure that it purchased the best products at the lowest price;
- Based on a Legislative Counsel opinion, we conclude that the district must adopt implementing regulations, which would, in part, require the Riverside Community College Foundation to pay the district for the foundation's use of district office space and employee services; and
- The district allowed at least 55 nonresident students to attend classes and subsequently to enroll in classes even though the students owed the district at least \$54,700 in required enrollment fees. Also, the district allowed 4 nonresident students to pay significantly lower fees because it incorrectly enrolled the students with resident status.

Background The district operates the Riverside Community College and two new campuses, which it opened in 1991. In 1989, more than 16,000 students attended Riverside Community College, and the district estimates that more than 30,000 students will attend classes in the district by the year 2000. A board of trustees, comprising five board members, oversees the activities of the district.

In addition to the construction of its two new campuses, the district is developing approximately 119 acres of its property primarily for commercial purposes. In 1987, the district accepted a proposal from a nonprofit corporation, the RCCD Development Corporation, for a 99-year lease of the district's property. In turn, the RCCD Development Corporation negotiated with a private developer, and in 1989, the district approved a lease-option agreement between the RCCD Development Corporation and a private developer. The lease-option agreement requires the private developer to pay at least \$80 million over 20 years.

**Real Property
Responsibility
Delegated
Improperly**

The district has leased approximately 119 acres of its property for development under an arrangement that may not protect the best interests of the district. Rather than maintaining direct control over the development of its property, the district trustees leased the property to the RCCD Development Corporation, a nonprofit corporation that subsequently negotiated and contracted with a private development corporation. In creating this leasing arrangement, the district trustees sought and relied on the advice of legal counsel, who concluded, in general, that the trustees had the authority to create the RCCD Development Corporation and to lease district property to the nonprofit corporation. However, in a legal opinion, the Legislative Counsel disagreed with the legal advice provided to the trustees and stated that the trustees may not delegate to a nonprofit corporation the responsibility for the control and management of district real property. Based on this Legislative Counsel opinion, we conclude that the trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property and have increased the district's risk of loss from legal challenges.

**Competitive
Bids Not
Always
Obtained**

The district did not always follow the competitive bidding requirements of the Public Contract Code and the Education Code and, as a result, could not ensure that it received the best products or services at the lowest cost. For 2 of the 30 contracts that we tested, the district did not obtain the required competitive bids. For one of these contracts, the district did not obtain competitive bids for the installation of a telephone system and other communications equipment that cost approximately \$135,200. For the other contract, the district incorrectly believed that it was exempt from competitive bidding requirements for its purchases of computer equipment totaling approximately \$248,700.

**Auxiliary
Organization
Not Designated**

Although the Riverside Community College Foundation (RCC Foundation) functions as an auxiliary organization, the district has chosen not to formally designate it as an auxiliary organization of the district. Specifically, the district has not adopted implementing regulations that, in part, specify the amount that the RCC Foundation must pay to the district for its use of district facilities. These implementing regulations would also require the RCC Foundation to reimburse the district for its use of district employees. The district believes that the Education Code does not require it to formally designate the RCC Foundation as an auxiliary organization. However, in a legal opinion provided to us, the Legislative Counsel concluded that, since the RCC Foundation meets the legal definition of an auxiliary organization, it is therefore required to comply with the Education Code and the regulations applicable to auxiliary organizations.

**Enrollment
Procedures
Not Always
Followed**

The district has not always followed its enrollment procedures for nonresident students. The district's director of enrollment services cited an inadvertent breakdown in enrollment procedures that allowed some nonresident students to attend classes and subsequently to enroll in classes without paying all required fees. In addition, the district allowed other nonresident students to pay significantly lower fees because it incorrectly enrolled them with resident status. As a result of these deficiencies, as of July 1990, 55 nonresident students owed the district approximately \$54,700 from the four previous semesters ending in the spring of 1990.

**Weak Control
Over Equipment
and Some
Revenues**

The district has not maintained adequate control over its equipment and does not provide sufficient accountability for performing arts' tickets and related revenues of the associated student body. Specifically, the district has not maintained the records it needs to locate all of its equipment, has not conducted a physical inventory of its equipment, and does not reconcile ticketsales for the performing arts with amounts collected and deposited. As a result of these weaknesses, the district has increased its risk of loss or theft of its assets. For example, the district's independent auditors could not locate computer equipment that cost \$109,100, and we could not locate other equipment valued at \$85,800 because the district did not mark the equipment with identification numbers and because its property listing did not provide complete information for identifying the equipment.

**Recommen-
dations**

To provide appropriate control over the development of its real property, the district should study the legal opinion of the Legislative Counsel and assess the legal and financial risks of continuing with the current lease arrangement. In addition, the district should consider the available options for placing the control and management of district real property directly with the district trustees. Finally, the Legislature should consider adding to existing law a provision that expressly prohibits a governing board of a community college district from delegating to a separate corporation its responsibility to control and manage district real property.

Concerning its failure to follow required procedures, the district should take the following actions:

- Obtain competitive bids as required by the Public Contract Code and the Education Code;
- Adopt implementing regulations that would be applicable to the RCC Foundation as an auxiliary organization of the district, and ensure that the RCC Foundation reimburses the district for the foundation's use of district office space and employees;

- Monitor students' enrollment records and take necessary actions to collect unpaid fees and to prevent students from continuing in classes unless they have paid all required fees; and
- Provide training for all enrollment services' staff to emphasize the district's procedures for determining and assigning resident status.

To safeguard its equipment and improve accountability over student body revenues, the district should take the following actions:

- Upon purchase, promptly record in the property records all necessary information to identify the district's equipment;
- Mark all equipment with the district's name and an identification number;
- Conduct a physical inventory of equipment annually; and
- Implement procedures to account for performing arts' tickets and to reconcile tickets sold with the money collected and deposited.

**Agency
Comments**

In the district's response, the superintendent/president disagrees with most of our recommendations. For example, he disagrees with the Legislative Counsel's opinions upon which we base our conclusions for the district's leasing of real property and regarding the legal requirements for the RCC Foundation. However, two of the district's five trustees also responded to our report. In their response, these trustees accepted our conclusions and believe that the district's full board of trustees should give careful consideration to our recommendations.

Introduction

The Riverside Community College District (district) is located to the east of metropolitan Los Angeles and operates the Riverside Community College. Riverside Community College, which had more than 16,000 students in 1989, celebrates its 75th anniversary in 1991. In addition to this campus in Riverside, the district opened two new campuses, one in Moreno Valley and one in Norco, in 1991 and expects that more than 30,000 students will attend classes in the district by the year 2000. A board of trustees, comprising five board members, oversees the activities of the district.

In addition to its general teaching and administrative activities, the district's operations also include food services, a bookstore, and student body activities. To provide additional support for its operations, the district uses the Riverside Community College Foundation (RCC Foundation) as an auxiliary organization to accept gifts, grants, and donations on behalf of the district. In accordance with Education Code requirements, the district obtains from independent auditors an annual financial audit of all funds and accounts of the district, including the RCC Foundation. The independent auditor's report also includes a summary of audit exceptions and recommendations for improving the district's management controls and techniques.

Aside from the annual financial audits, the Riverside County Grand Jury also has reviewed certain aspects of the district's operations. During 1987 and 1988, this grand jury investigated allegations concerning fiscal irresponsibility and poor management practices of Riverside Community College. In its report dated June 1988 and in other correspondence from 1987 and 1988, the

Riverside County Grand Jury concluded that, although the policies and operations of the district are not necessarily popular with everyone, there was no evidence to support the allegations of impropriety.

**Scope and
Methodology**

The purpose of this audit was to review various allegations of impropriety regarding the management practices and financial operations of the district. We received and reviewed approximately 75 allegations, some of which were similar to the allegations reviewed by the Riverside County Grand Jury. As explained in the following paragraphs, of the approximately 75 allegations we reviewed, we found sufficient evidence and basis for expanding our tests in six areas. We focused our review on the specific allegations and did not evaluate the district's overall system of internal controls. Those allegations that were supported by available evidence are discussed in this report.

For each allegation, we conducted initial interviews and reviewed applicable documents to ascertain the nature of the allegation and to determine whether there was sufficient basis to continue our review of the issue. Our initial audit work included interviews with the people making the allegations; current and former employees of the district; and knowledgeable representatives of state agencies, Riverside County, and the district's independent auditors. Our initial work also included reviews of materials provided to us by the people making the allegations, district records, audit reports prepared by independent auditors, state laws and regulations, and policies and regulations of the district's board of trustees.

For many of the allegations, we did not perform any work beyond our initial interviews and reviews of materials because the circumstances of the allegations made it impractical or impossible for us to continue our review. Specifically, for some of the allegations, we did not receive enough information, such as dates, names, and specific incidents or examples of impropriety, to investigate the complaint. For other allegations, appropriate officials already had investigated the complaints, the district had taken corrective actions,

and we found no evidence of a continuing or current problem. Further, some allegations related to incidents that were too old to investigate, and the district is not required to save records related to the incidents. Finally, some allegations related to personal disagreements with the management style of the district, professional judgement, and other issues that we could not audit.

Although many of the allegations did not warrant further investigation, we found sufficient evidence and basis to continue our review of several allegations. In performing our additional reviews, we limited our tests to the specific incidents and examples provided to us in the allegation. When specific incidents and evidence supported the allegation, we expanded our review to include tests of the district's system of controls over the applicable area. In the following paragraphs, we describe the specific procedures that we performed.

To determine whether the district took appropriate actions when it leased its real property to the RCCD Development Corporation, we reviewed the relevant laws and regulations, other legal documents, and legal opinions obtained by the district. We also interviewed current and former employees of the district who oversee the development of district real property, and we reviewed resolutions and minutes of board meetings for the district and the RCCD Development Corporation. Finally, we asked the Legislative Counsel to provide us with a legal opinion regarding the district's leasing arrangement for its real property.

To determine whether the district adheres to contracting policies and regulations, we selected for testing the contracts and vendors named in the allegations. In addition, we judgmentally selected a sample of other contracts from the district's records for the period from July 1988 through August 1990. We examined the contracts to determine whether the district had properly authorized them, had followed all requirements for competitive bidding, had obtained evidence that goods or services were received before making payment, and had ensured that the total payment did not exceed the contract total.

To determine whether it is appropriate for the district to donate office space and employee services to the RCC Foundation, we reviewed the relevant laws, regulations, and other legal documents. We also interviewed district employees who oversee the RCC Foundation's operations and the legal counsel for the Chancellor's Office of the California Community Colleges. Finally, we asked the Legislative Counsel for a legal opinion regarding the district's relationship with the RCC Foundation.

To determine whether the district provided sufficient controls over its enrollment process, we reviewed the district's enrollment procedures for nonresident students. We interviewed the district's director of enrollment services, examined documentation maintained by the enrollment services' staff, and reviewed the relevant laws, regulations, and policies of the district. We also selected a sample of nonresident students and tested their enrollment records for compliance with applicable requirements.

To determine whether the district maintains adequate controls over its equipment and provides sufficient accountability for student body revenues, we interviewed employees of the district and the independent auditors for the district. In addition, we reviewed the applicable laws, regulations, and policies of the district. Further, we reviewed the audit tests of equipment and student body revenues performed by the district's independent auditors and performed our own tests of controls over the district's equipment.

Chapter 1 The Riverside Community College District's Arrangement for Leasing Real Property May Not Protect Its Interests

Chapter Summary

The trustees of the Riverside Community College District (district) have improperly delegated to a nonprofit corporation their responsibility to control and manage district real property. Rather than maintaining direct control over the development of district real property and contracting directly with a private developer, the district trustees created a nonprofit corporation, the RCCD Development Corporation, which negotiated and contracted with a private developer and otherwise managed the development of the real property the district had leased to the corporation. The district trustees relied upon advice and opinions of legal counsel, who concluded, in general, that the trustees had the authority to create a nonprofit corporation and to lease district real property to the corporation. However, according to the Legislative Counsel, the Education Code does not specifically authorize the district trustees to delegate to nondistrict employees their responsibility to control and manage district real property. Based upon the Legislative Counsel's opinion, we conclude that the district trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property. Moreover, the district's lease arrangement with the RCCD Development Corporation may not protect the best interests of the district. Finally, as a result of the lease arrangement, the district and the RCCD Development Corporation may not have complied with all competitive bidding requirements.

Background

In March 1986, the district trustees authorized the formation of a California nonprofit public benefit corporation. Incorporated in October 1986, the RCCD Development Corporation is organized under the Nonprofit Public Benefit Corporation Law. Of the corporation's five directors, one must be the superintendent of the district and two others are appointed by a majority of the district trustees. The corporation exists, in part, to support and further the purposes of the district.

In September 1987, the district trustees declared their intent to lease approximately 119 acres of the district's property, primarily for commercial uses. In October 1987, the trustees opened bid proposals for leasing the district's property. There were no oral bids, and the only written bid was from the RCCD Development Corporation. The trustees accepted the proposal from the RCCD Development Corporation to lease the district's real property for 99 years, during which time the RCCD Development Corporation will pay the district a minimum rental fee of \$1 per year or all net proceeds from the leased property, whichever is greater.

In March 1988, the RCCD Development Corporation circulated a request for developer qualifications and proposals for developing the district's real property. After evaluating various proposals, the RCCD Development Corporation, without seeking competitive bids, entered into exclusive negotiations with a private development corporation. In August 1989, the district trustees and the directors of the RCCD Development Corporation approved a lease-option agreement between the RCCD Development Corporation and the private development corporation. Under the lease-option agreement, the private development corporation must pay at least \$80 million over 20 years to keep the agreement in effect.

**Property Lease
Decision**

According to the district's former vice president for college planning and development, one of the reasons for creating this leasing arrangement was that the district wanted to negotiate the terms and conditions for use of its real property rather than follow a public bid process. The Education Code, Section 81360 et seq., requires the

district to obtain competitive bids for leasing district real property. However, based on legal advice it obtained, the district believed that, because it had followed the bidding requirements when it leased its property to the RCCD Development Corporation, the corporation could then negotiate a subsequent lease with a private developer without the need for further competitive bids.

The district provided several legal opinions from private and public attorneys as support for its position and for the propriety of the lease arrangement. In one of these legal opinions, the legal counsel concluded that there is a substantial basis to support the district's lease to the RCCD Development Corporation and that the corporation could subsequently contract with a private developer without obtaining further competitive bids. However, in this opinion, the legal counsel qualified its conclusion by saying that there was no clear court interpretation addressing the district's lease arrangement. In other legal opinions obtained by the district, the legal counsel concluded, in general, that the trustees had the authority to create a nonprofit corporation and to lease district real property to the corporation.

**Legislative
Counsel's
Opinion**

We obtained from the Legislative Counsel a legal opinion regarding the district's creation of the RCCD Development Corporation and the district's lease arrangement (see Appendix A). The Legislative Counsel concluded that, although the district trustees had the authority to create a nonprofit corporation, the trustees may not delegate to that corporation the responsibility for the control and management of district real property. The Legislative Counsel stated that, absent some other statutory authority, the comprehensive provisions of the Education Code, Section 81360 et seq., relating to the sale or lease of real property preempt the authority of the district to sell or lease its real property in any other manner. The Legislative Counsel's review of other statutory provisions did not disclose any provision that expressly authorizes the district trustees to delegate responsibility for the control and management of district real property to a nonprofit corporation. Without such authority, the Legislative Counsel opined that the district trustees must follow the comprehensive provisions of the Education Code with respect to the sale or lease of real property.

In addition, the Legislative Counsel determined that the lease between the district and the RCCD Development Corporation may be invalid because the lease may not contain an essential element of a contract, namely, the agreement between two parties capable of contracting. The Legislative Counsel discussed the possibility that, since the RCCD Development Corporation is under the control of the governing board of the district and, with respect to the lease of district real property, is a “mere conduit of the business” of the district trustees, it could be alleged that the corporation is the alter ego of the district trustees and, thus, is not a separate and distinct party capable of entering into a contract. To invoke the doctrine of alter ego, it must be shown that the corporation is a mere conduit for the transaction of private business and that no separate identity of the individual and corporation really exists.

Based on the opinion of the Legislative Counsel, we conclude that the district trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property. The legal questions about the validity of the lease arrangement increase the district’s risk of loss from legal challenges brought by aggrieved parties, who might include private developers, district employees, and members of the community.

In addition to legal questions about the validity of the lease arrangement, the district and the RCCD Development Corporation may not have complied with all of the Education Code requirements for competitive bidding with respect to the sale or lease of real property. The Education Code requirements for competitive bidding are designed, in part, to ensure that the district contracts with responsible bidders for the highest return to the district. Thus, the district’s best interests may not be served even if the district’s arrangement with the RCCD Development Corporation effectively released it from the Education Code requirements for competitive bidding. According to the Legislative Counsel, however, the Education Code’s requirements for competitive bidding still apply to the RCCD Development Corporation’s lease to a private developer unless the Board of Governors of the California Community Colleges waived the requirements. According to the Chancellor’s Office of the California Community Colleges, neither the district nor the RCCD Development Corporation applied to the Board of Governors for a waiver of the competitive bidding requirements.

In addition to the Board of Governors' ability to waive competitive bidding requirements, the Legislative Counsel also indicated that the courts have created exceptions permitting the waiver of competitive bidding requirements in certain circumstances. In particular, the Legislative Counsel cited one case in which the court found that contracts for a development project were valid even though a redevelopment agency did not comply with competitive bidding requirements. In this case, the court held that the contracts in question were an exception for which competitive bidding was "undesirable, impractical, or impossible." However, the Legislative Counsel opined that, absent pertinent matters unknown to the Legislative Counsel, the facts concerning the district's leasing arrangement with the private developer do not come within the scope of this exception.

Conclusion

The Riverside Community College District leased its real property for development through an arrangement that is subject to legal challenges and may not protect the best interests of the district. Under the lease arrangement, the district has used a separate nonprofit corporation, the RCCD Development Corporation, to negotiate with private developers and to otherwise manage the district's real property. In developing the lease arrangement, the district trustees relied upon the advice and opinions of legal counsel, who concluded, in general, that the trustees had the authority to create a nonprofit corporation and to lease district real property to the corporation. However, we obtained from the Legislative Counsel a legal opinion that disagrees with the district's legal advice and questions the validity of the lease between the district and the RCCD Development Corporation. Based upon the opinion of the Legislative Counsel, we conclude that the district trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property and have increased the district's risk of loss from legal challenges. Finally, as a result of the lease arrangement, the district and the RCCD Development Corporation may not have complied with all competitive bidding requirements.

Recommendations

To protect the best interests of the Riverside Community College District and to ensure that the district contracts with the contractor who provides the highest return on its investment, the district should take the following actions:

- Review and evaluate the legal opinion of the Legislative Counsel and assess the legal and financial risks of continuing with the current lease arrangement; and
- Consider the available options for placing the control and management of district real property directly with the trustees and for obtaining competitive bids as required by the Education Code for the development of district property.

The Legislature should consider adding a provision to the Education Code that expressly prohibits a governing board of a community college from delegating to a separate corporation its power and responsibility to control and manage district real property.

Chapter 2 The Riverside Community College District Has Not Always Followed Required Procedures and Needs To Improve Controls Over Some of Its Assets

Chapter Summary

The Riverside Community College District (district) has not always followed required procedures for its operations and has not provided adequate controls over its assets. Specifically, the district has not always obtained competitive bids for purchases of services and equipment and, as a result, cannot ensure that it has purchased the best services or products at the lowest price. In addition, the district has not designated the Riverside Community College Foundation (RCC Foundation) as an auxiliary organization and, as such, has not adopted implementing regulations that, in part, would prohibit the district from providing unreimbursed office space and employee services to the RCC Foundation. Further, the district has not always followed its enrollment procedures. For example, it allowed some nonresident students to attend classes without paying required fees. It also allowed other nonresident students to pay significantly lower fees because the district incorrectly enrolled the students with resident student status. Finally, the district has not maintained adequate controls over its equipment and over certain revenues of the associated student body, resulting in an increase in its risk of loss or theft of its assets.

Competitive Bids Not Always Obtained

The district did not always follow the requirements for obtaining competitive bids. For 2 of the 30 contracts we tested, the district did not obtain competitive bids as required by the Public Contract Code and the Education Code. The Public Contract Code, Section 20651, requires the governing board of community college districts to award contracts of more than \$15,000 for work to be done and of more than \$21,000 for the purchase of materials and supplies to the

contractor who submits the lowest responsible bid. In addition, the Education Code, Section 81645, states that the governing board of community college districts may contract with an acceptable contractor who is one of three lowest responsible bidders for the procurement or maintenance of electronic data-processing systems and supporting software. When the district does not follow the required bidding procedures, it cannot ensure that it purchases the best services or products at the lowest price.

In our testing, we found that the district did not obtain competitive bids for the installation of a replacement telephone system, which was donated to the district, and for other communications equipment, costing a total of approximately \$135,200. Although the district requested competitive bids for the maintenance of its existing telephone system and awarded the maintenance agreement to the only bidder, we concluded that the maintenance agreement did not cover the installation of the replacement telephone system. Nothing in the maintenance agreement indicates that the maintenance contractor also would install the telephone system and other communications equipment. In requesting bids for the maintenance agreement, the district indicated only that it planned to install the replacement telephone system and required that the company awarded the maintenance agreement have personnel trained in maintaining the district's existing and future telephone system.

According to the district's business manager, he believed that the terms of the competitive bid for maintenance, which included provisions for nonmaintenance work, complied with the bidding requirements. He also stated that the district would have violated provisions of its maintenance agreement and could have created conflicts between contractors and the district if it had allowed a contractor other than the maintenance contractor to install the telephone system and other communications equipment. Although a provision in the maintenance agreement allows for nonmaintenance services and charges, the provision states that any major rebuilding or specification changes are not expected to be covered by the maintenance agreement.

In addition to not obtaining competitive bids for installing the communications equipment, the district did not obtain competitive bids for its purchase of computer equipment from another company. We reviewed various purchases that the district made from this company and found five separate purchases of computer equipment, totaling approximately \$248,700, for which the district should have obtained competitive bids.

According to the district's director of fiscal operations, the district believed that the State of California had a volume purchase agreement with the computer company authorizing the district to purchase equipment from the company without obtaining competitive bids. According to the deputy director for the procurement division of the Department of General Services, although the State of California has a volume procurement amendment whereby the computer company offers to sell specific items to the State and local agencies at discounted prices, this amendment does not exempt a local entity from securing bids for the purchase of computer products and services.

**Auxiliary
Organization
Not Designated**

Although the RCC Foundation serves the district and functions as an auxiliary organization, the district has chosen not to formally designate the RCC Foundation as an auxiliary organization of the district. Incorporated in 1976, the RCC Foundation is organized pursuant to the California Nonprofit Corporation Law, and its bylaws require one of the district's trustees to serve as a director and the district's superintendent to serve as an ex-officio director. Although the RCC Foundation was incorporated in 1976, according to its director, it was not particularly active in fund-raising activities before 1983. In 1984, the district trustees named the RCC Foundation as the exclusive organization to accept gifts, grants, donations, and bequests on behalf of the district. For fiscal year 1989-90, the RCC Foundation reported contributions and interest earnings totaling approximately \$385,000.

We asked the Legislative Counsel to review whether the RCC Foundation would be considered an auxiliary organization and, thus, be required to follow the provisions of law applicable to

auxiliary organizations of a community college district, even though the district chooses not to designate the RCC Foundation as an auxiliary organization. (See Appendix B for a copy of the Legislative Counsel's opinion.) The Legislative Counsel concluded that the RCC Foundation meets the legal definition of an auxiliary organization and that the district has established through its official acts the RCC Foundation as an auxiliary organization. As such, the Legislative Counsel concluded that the RCC Foundation must comply with provisions of the law applicable to auxiliary organizations whether or not the district designated it as an auxiliary organization. The Legislative Counsel stated that it was the intent of the Legislature to require all entities that fall within the definition of an auxiliary organization to comply with the provisions of law applicable to auxiliary organizations. Based upon the legal opinion of the Legislative Counsel, we conclude that the district must comply with provisions of the Education Code and the California Code of Regulations and adopt implementing regulations that would be applicable to the RCC Foundation as an auxiliary organization. These implementing regulations, in part, would prohibit the district's current practice of donating district office space and providing unreimbursed employee services to the RCC Foundation. In particular, the California Code of Regulations, Section 59257(j)(5) and (6), requires a district to adopt implementing regulations that specify the charge or rental an auxiliary organization must pay for its use of district facilities and that also provide for full reimbursement to the district for an auxiliary organization's use of district employees.

The Legislative Counsel's opinion indicates that different provisions of law may apply to auxiliary organizations that existed before 1980. The Education Code, Section 72682, states that an auxiliary organization that was in existence on August 31, 1980, shall continue to operate under the relevant provisions of the Education Code as they read before August 30, 1980, until such time, if any, as the organization is approved pursuant to the current provisions of the Education Code. The Legislative Counsel stated that, under the pre-1980 law, an auxiliary organization was not required to reimburse a district for its use of district facilities and employees. The Legislative Counsel opined that, based on the information provided to the Legislative Counsel, the RCC Foundation was in existence before August 30, 1980, within the

meaning of Section 72682 of the Education Code. However, the Legislative Counsel also determined that actions taken by the district's trustees, beginning in 1984, effectively transformed the RCC Foundation from a "nascent appendage of the college into a significant arm with well-defined fund-raising powers and obligations." As a result of these changes, the Legislative Counsel concluded that the ongoing operations of the RCC Foundation are subject to existing law and that the RCC Foundation must operate under current legal provisions applicable to auxiliary organizations.

The district believes that, because the RCC Foundation was in existence before 1980, the Education Code does not require the district to formally establish the RCC Foundation as an auxiliary organization and indicated that there are certain disadvantages to taking such action. For example, the district stated that, if it established the RCC Foundation as an auxiliary organization, this relationship might limit state funding for the district and restrict the district's eligibility for receiving certain grants and gifts from foundations that will not fund public institutions. In addition, the district indicated that the RCC Foundation already follows the same accounting and administrative procedures as the district.

**Enrollment
Procedures
Not Always
Followed**

Under the district's enrollment process, students can enroll in classes without paying fees. However, the district's policy is to monitor those students who owe fees and to drop from classes any student who has not paid enrollment and other fees before an established date. In addition, the district's policy is to place a hold on the records of a student who owes fees. The hold prevents students from subsequently enrolling in classes and from receiving transcripts of grades until they pay all required fees. Finally, the Education Code, Section 68050, in relevant part, states that a student classified as a nonresident shall be required to pay, in addition to other fees required by the institution, nonresident tuition.

The district has not always followed its enrollment procedures for nonresident students. As of July 1990, 55 nonresident students attended classes and enrolled in subsequent semesters without

paying approximately \$54,700 in enrollment and other fees for the four previous semesters ending in the spring of 1990. In addition, in our tests of 44 nonresident students, we found four nonresident students enrolled during these semesters who paid significantly lower fees because the district incorrectly enrolled them with resident status; annual enrollment fees for a full-time student are approximately \$2,300 greater for a nonresident student than for a resident student. The district indicated that an average of 253 nonresident students had enrolled during each of these four previous semesters.

The district's director of enrollment services stated that an inadvertent breakdown in controls allowed nonresident students to attend classes without paying fees. In addition, she cited clerical errors during peak enrollment periods as the reason for enrolling nonresident students as residents. According to the director of enrollment services, the district has taken corrective actions to follow its prescribed enrollment procedures.

Although the district has taken corrective actions, we found that some weaknesses and errors still exist. We reviewed the enrollment records for 21 of the 55 nonresident students who owed fees to the district as of the end of the 1990 spring semester. We reviewed these records to determine whether the district had corrected the errors that resulted from previous enrollment transactions. We found that the district had placed holds on all but one student's records. In addition, the district had detected the errors and corrected the enrollment records for three of the four nonresident students whom the district had incorrectly enrolled with resident status.

We also reviewed the enrollment records for 23 nonresident students who enrolled in 1990 summer sessions to determine whether the district's corrective actions improved controls over subsequent enrollment transactions. For 4 of the 23 students we tested, the district had not placed holds on the students' records even though the students still owed fees to the district. In addition, for one other student, the district overrode an existing hold and allowed the student to enroll in subsequent classes.

**Weak Control
Over Equipment**

The Budget and Accounting Manual of the California Community Colleges requires, in part, that community college districts maintain an inventory system for equipment containing the description, name, identification numbers, original cost, date of acquisition, and location for all equipment that cost or had a market value when acquired of at least \$200. In addition, good accounting practices require that the district conduct a physical inventory of its equipment annually and reconcile the inventory with its accounting records.

We reviewed the audit tests of equipment performed by the district's independent auditors for the fiscal year ended June 30, 1990. Based on their test results, the independent auditors concluded that the district appeared to have weak controls over its equipment. From the district's purchases for the year, the independent auditors tested five purchases of computer equipment with a total cost of approximately \$109,100. The independent auditors could not locate in the district's listing of property two of the equipment purchases that totaled approximately \$99,800. In addition, the independent auditors could not physically identify any of these items of equipment because the district does not mark its equipment with identification numbers. In a separate test, the independent auditors indicated that they were unable to physically identify typewriters listed in the district's records because the typewriters often were moved from assigned locations without the district's updating its records. Finally, the independent auditors indicated that the district does not conduct an annual physical inventory of its equipment.

In addition to reviewing the work of the district's independent auditors, we performed limited tests of controls over the district's equipment. We selected from the district's listing of property six pieces of equipment with a reported value of approximately \$85,800. We could not physically identify any of the six pieces of equipment because the district's listing of property did not provide complete information for identification or because the district did not mark the equipment with identification numbers.

The district's business manager believes that the district has adequate controls over its equipment, but he also stated that the district does not promptly update its equipment records. According to the district's business manager, the district has not allocated additional resources to promptly update its equipment records because he believes that the costs associated with additional controls would outweigh any added benefits. However, without adequate equipment records and inventory controls, the district cannot identify all equipment that it has purchased, resulting in an increased risk of loss or theft of equipment. Finally, because the district has not maintained a complete historical cost record of equipment and other property, the district's independent auditors have qualified their opinion on the district's financial statements for fiscal years 1988-89 and 1989-90.

**Insufficient
Accountability
for Some
Revenues**

The district does not provide sufficient accountability for performing arts' tickets and related revenues of the associated student body. The district reported that its deposits from ticket sales of the performing arts were approximately \$214,900 for fiscal year 1988-89 and \$237,900 for fiscal year 1989-90. Good accounting practices require that the district safeguard tickets from improper use and account for revenues by reconciling the number of tickets sold with amounts collected and deposited in the bank. However, in its audit report for fiscal year 1988-89, the district's independent auditors reported that the district does not reconcile ticket sales for the performing arts with actual deposits.

We also reviewed the audit tests performed by the district's independent auditors for fiscal year 1989-90. Based on their tests, the independent auditors concluded that the district still does not reconcile the number of tickets sold for specific events with the amounts received and deposited in the bank. Without such accountability for ticket sales, the district has increased its risk of loss or theft of associated student body revenues.

According to the district's business manager, the district has considered various alternatives for improving controls over performing arts' tickets and revenues, including the use of new computer programming to assist in the reconciliation of tickets sold with actual cash deposited.

Conclusion

The Riverside Community College District has not always followed required procedures for its operations and needs to improve controls over its property and certain revenues. Because the district did not always obtain competitive bids as required, it cannot ensure that it purchased the best products at the lowest price. In addition, the district has not adopted implementing regulations that, in part, prohibit the district from donating office space and employee services to the Riverside Community College Foundation. Further, the district allowed some nonresident students to attend classes without paying any of the required fees and incorrectly allowed other nonresident students to pay significantly lower fees because the district did not always follow its enrollment procedures. Finally, the district has not maintained adequate controls over its equipment and over some revenues of the associated student body, resulting in its increased vulnerability to loss or theft of its assets.

Recommendations

To ensure that it purchases the best services and products at the lowest price, the Riverside Community College District should obtain competitive bids for contracts of more than \$15,000 for work to be done and more than \$21,000 for the purchase of equipment and materials.

To ensure that the district and the Riverside Community College Foundation comply with provisions of law applicable to auxiliary organizations, the district should adopt implementing regulations that would be applicable to the RCC Foundation as an auxiliary organization of the district. It should also ensure that the RCC Foundation reimburses the district for its use of district office space and employees.

To ensure that it follows all enrollment procedures and that students pay all required fees, the district should take the following actions:

- Review its listings of students who owe enrollment and other fees, and ensure that the district places the necessary holds on the students' records and prevents the students from enrolling in subsequent semesters; and
- Provide training for all staff to emphasize the district's procedures for determining and assigning residence status for students.


To safeguard its equipment, the district should take the following actions:

- Upon purchase, promptly record in its listing of property the description, name, identification numbers, original cost, acquisition date, and location for all equipment and other property that cost at least \$200;
- Mark all equipment with the district's name and an identification number; and
- Conduct a complete physical inventory of all equipment annually, and reconcile the physical inventory with the related accounting records.

To safeguard performing arts' revenues and provide assurance that all amounts collected from ticket sales are deposited in the bank, the district should implement control procedures to account for all tickets printed, used, and returned. In addition, these control procedures over revenues should provide for an effective reconciliation of all tickets sold with the money collected and deposited in the bank.

We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


KURT R. SJOBERG
Auditor General (acting)

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January 7, 1991

Mr. Kurt R. Sjoberg
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Community College District Property - #21488

Dear Mr. Sjoberg:

You have asked us to discuss various issues based upon the situation summarized below:

In March 1986, the Board of Trustees of the Riverside Community College District (hereafter, district) authorized the formation of a California nonprofit public benefit corporation. The Riverside Community College District Development Corporation (hereafter, corporation) was incorporated on October 16, 1986, and is organized under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of the Corporations Code). You state that the district has not designated the corporation as an auxiliary organization of the district pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code.

On September 15, 1987, the trustees of the district declared and advertised their intent to lease approximately 119 acres of the district's property for the purpose of constructing, operating, and maintaining improvements primarily for commercial uses. On October 20, 1987, the trustees opened bid proposals to

lease the property. There were no oral bids and the only written bid was from the corporation. The trustees accepted the corporation's proposal under which the corporation will pay to the district a minimum rental fee of \$1 per year or all net proceeds from the leased property, whichever is greater.

In March 1988, the corporation circulated a request for developer qualifications and proposals for development of the district's property. After considering various proposals the corporation, without conducting competitive bidding, entered into exclusive negotiations with the IDM Development Corporation (hereafter, IDM). On August 15, 1989, the trustees of the district and the directors of the corporation approved an option-to-lease agreement between the corporation and IDM. Under the agreement, IDM must make minimum payments totaling \$80,000,000 over 20 years to keep the option agreement in effect.

Also relevant are certain facts about the corporation. The corporation consists of five directors, one of whom is required to be the superintendent of the district and at least two of whom are required to be designated by a majority of the trustees of the district, with the remaining directors required to be designated by a majority of the directors of the corporation. The directors receive no compensation for their services to the corporation. You state that the minutes of the initial meeting of the corporation on February 18, 1987, indicate that five directors were elected but that there is no record of any action taken in open session by the district trustees until May 1988 when the trustees specifically designated the directors of the corporation for the 1988-89 corporate year.

Further, the sole incorporator of the corporation is the superintendent of the district who, as mentioned above, is a director of the corporation.

The stated purposes of the corporation according to the articles of incorporation are to support and further the purposes of the district through gifts, transfers of assets and otherwise; to receive transfers of assets from the district and any other person or entity; and to do any acts which are necessary, proper, useful, incidental or advantageous to those purposes.

I. Creation of the Nonprofit Corporation

The issues here relate to the authority of the Trustees of the Riverside Community College District to create the Riverside Community College District Development Corporation as a nonprofit corporation.

With respect to the general authority of the governing boards of community college districts, Section 14 of Article IX of the California Constitution permits the Legislature to authorize the governing boards of all school districts, including community college districts, to initiate and carry on any programs and activities, or to otherwise act in any manner that is not in conflict with the laws and purposes for which school districts are established.

Pursuant to that constitutional authorization, the Legislature enacted Section 72233 of the Education Code (repealed by Chapter 973 of the Statutes of 1988, but in effect at the time of the creation of the corporation; now see Sec. 70902),¹ which authorized the governing board of any community college district to initiate and carry on any program, activity, or otherwise act in any manner that is not in conflict or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which school districts are established.

The matter of nonprofit public benefit corporations, such as the corporation at issue, is not addressed in the Education Code. There is no express provision of the Education Code that would prohibit the establishment of the corporation, as described. The regulation of nonprofit public benefit corporations is governed by the Nonprofit Public Benefit Corporation Law, contained in Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

A nonprofit public benefit corporation is required under that law to be organized for public or charitable purposes and not for the private gain of any person (Secs. 5111 and 5130, Corp. C.). However, it may "[c]arry on a business at a profit and apply any profit that it makes to any activity in which it may lawfully engage" (subd. (1), Sec. 5140, Corp. C.).

We think that the activities of receiving gifts and transfers of assets and other activities to support the purposes of the district are public purposes within the meaning of Section 5111 of the Corporations Code.

Thus, the establishment of the Riverside Community College Development Corporation is not precluded by the Nonprofit Public Benefit Corporation Law (Pt. 2 (commencing with Sec. 5110), Div. 2, Title 1, Corp. C.).

¹ All section references are to the Education Code, unless otherwise indicated.

II. The Lease of Property to the Corporation

The issues here involve the responsibility of the governing board to manage and control its real property and the validity of the lease of district real property to the corporation.

The beneficial ownership of title to community college district property is in the state and the district holds legal title as trustee (Hall v. City of Taft, 47 Cal. 2d 177, 181; Butler v. Compton Junior Coll. Dist., 77 Cal. App. 2d 719, 729). In this connection, the governing board of a community college district is empowered in the name by which the district is designated to hold and convey property for the use and benefit of the district (para. (13), subd. (b), Sec. 70902).

Moreover, as stated above, the governing board is authorized to initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law and that is not in conflict with the purposes for which school districts are established (subd. (a), Sec. 70902). Thus, it is pertinent to discuss whether there are statutes governing the control and management of district property that are preemptive in nature.

In regard to the sale or lease of district real property which is not or will not be needed by the district for school classroom buildings, Article 4 (commencing with Section 81360) of Chapter 2 of Part 49² prescribes the authority of a community college district. Specifically, Article 4 authorizes the governing board of the district to sell or lease this kind of property for a term not to exceed 99 years.

The lease agreed to by the governing board and the corporation does provide for a period of 99 years. It also provides that the corporation will pay the district the sum of \$1 per year as the basic rent for the use of the leased premises, or all proceeds, income, rents, issues and profits derived from the leased premises, less costs and expenses to construct upon and operate and maintain the leased premises, whichever is greater.

A lease as a form of contract must contain the essential elements of a contract which include parties capable of contracting; their consent; a lawful object; and a sufficient cause or consideration (Sec. 1550, Civ. C.). In the situation under discussion here we can assume that the parties consented to the lease agreement.

² Hereafter Article 4.

Good consideration is defined as "[a]ny benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor ..." (Sec. 1605, Civ. C.). A consideration is sufficient to support a contract if there is either benefit to the promisor or detriment to the promisee (Anchor Cas. Co. v. Surety Bond Sav. & Loan Assn., 204 Cal. App. 2d 175, 181). In the situation presented here the school district will receive under the lease \$1 per year or all proceeds, income, rents, etc. less costs, whichever is greater. The law ordinarily does not require a weighing of the quantum of benefit received by the promisor or of the detriment suffered by the promisee in determining whether sufficient consideration exists to support a contract where the consideration is plainly substantial (Blocksidge v. Broadway Sixth Co., 207 Cal. App. 2d 628, 632). Thus, it appears that the money that the district will receive is sufficient consideration.

With respect to the element of parties capable of contracting, it may be argued, in this situation, that there are not two parties but only one and that the lease is invalid. The principle supporting this argument is known as the disregard of corporate entity or the alter ego doctrine.

The broad purpose of the alter ego doctrine is to look through the fiction of a corporate entity and to hold individuals doing business in the name of the corporation liable for its debts and misdeeds (Tarter, Webster & Johnson, Inc. v. Windsor Developers, Inc., 217 Cal. App. 2d Supp. 875, 879-880) and the doctrine is generally resorted to only when it is necessary to avoid a grave injustice (Dashew v. Dashew Bus. Machines, Inc., 218 Cal. App. 2d 711, 716). Generally, the necessary elements required to establish an alter ego relationship between two corporations include the (1) control of one by the other corporation; (2) one being the mere conduit of the business of the other corporation; and (3) recognition of a separate existence occasioning fraud and injustice (15 Cal. Jur. 3d "Corporations" Sec. 37). Bad faith in one form or another is always an underlying consideration and must be shown before the court may disregard the fiction of separate corporate existence (Marr v. Postal Union Life Ins. Co., 40 Cal. App. 2d 673, 681).

Thus, as applied to the situation here it could be alleged that the corporation, because of its membership and purposes, is under the control of the governing board of the district and that, with respect to the lease of district real property, the corporation is the mere conduit of the business of

the board. It may be alleged that the creation of the corporation was intended to accomplish the lease of district real property without compliance with laws such as Article 4 applicable to the governing board. Whether these allegations, if true, amount to bad faith, fraud, or a grave injustice would be questions of fact. Such a purpose underlying the agreement between the board and the corporation might also constitute an unlawful object of a contract.

Therefore, there are several factors which militate against the validity of the lease between the governing board and the corporation and which make the lease appear as an attempt by the board to delegate its responsibility to control and manage district real property.

III. Delegation to the Corporation of the Board's Responsibility to Control and Manage its Real Property

In this section we examine the ability of the governing board to delegate its responsibility to control and manage its real property.

While Article 4 does permit the governing board of a community college district which has established a standard rate or rates for the lease of its real property pursuant to Article 4 to delegate to a leasing agent its authority to lease district property (Sec. 81361), Article 4 makes no provision for the governing board to delegate to a nonprofit corporation its power to lease its real property for commercial, income producing purposes.

The fundamental rule of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law (Select Base Materials v. Bd. of Equalization, 51 Cal. 2d 640, 645).

In this regard, the Legislature has granted broad authority to the governing board of a community college district to initiate and carry on any program, activity, or to otherwise act in any manner not preempted by any law (subd. (a), Sec. 70902).

The quantity of statutes is not determinative per se of a legislative intent to preempt a particular field (Birkenfeld v. City of Berkeley, 17 Cal. 3d 129, 142). The general scheme adopted by the state for the regulation of a particular subject

may be found in a single comprehensive statute, or in a section of a particular code, as well as in a multiplicity of code sections which in the aggregate spell a legislative intent to occupy the whole or part of the field of legislation (In re Martin, 221 Cal. App. 2d 14, 17).

The provisions of Article 4 embrace a number of requirements relating to the sale or lease of real property, including the use of funds derived from the sale or lease (Sec. 81363), the offering to other governmental entities pursuant to a prescribed procedure (Sec. 81363.5), specified bidding requirements (Secs. 81370 to 81376, inclusive), and other requirements. We think the comprehensive provisions of Article 4 (commencing with Section 81360) of Chapter 2 of Part 49 preempt the authority to sell or lease real property in any other manner, and, despite the lack of a declaration by the Legislature to that effect, reflect legislative coverage of a matter of state concern. It follows that a governing board must find specific authority in Article 4 or elsewhere to delegate its power to a nonprofit corporation to lease its real property for commercial income-producing purposes.

A review of other relevant provisions of the Education Code does not disclose any other authority for the governing board to delegate this power to a nonprofit corporation.

For instance, Section 72241.5 permits the governing board to "contract with a county or city, or county superintendent of schools, or other governmental entity for services which provide a benefit to the community college district." The corporation, however, is a private entity and not within the scope of Section 72241.5.

Subdivision (f) of Section 72413 permits the superintendent to enter into contracts for and on behalf of the district pursuant to Section 81655. Section 81655 permits the governing board, by majority vote, to delegate the power to contract to the superintendent, or those persons the superintendent may designate, or, if there is no superintendent, to such other officer or employee as the board may designate. Any contract made must be approved or ratified by the governing board. However, the final sentence of Section 81655 makes it clear, in prescribing liability for the consequences of the use of this power, that the power to contract must be invested in a district official: "In the event of malfeasance in office, the district

official invested by the governing board with such power of contract shall be personally liable to the district employing him for any and all moneys of the district paid out as a result of such malfeasance." We do not think the corporation and its directors are district officials within the scope of Section 81655.

Section 70902, discussed above, also requires the governing board to manage and control district property and permits the governing board to "contract for the procurement of goods and services as authorized by law" (para. (6), subd. (b), Sec. 70902). The governing board is also required to "[H]old and convey property for the use and benefit of the district" (para. (13), subd. (b), Sec. 70902).

Subdivision (d) of Section 70902 permits the governing board, by majority vote, to adopt a rule delegating any power vested in the board "to the district's chief executive officer or any other employee or committee as the governing board may delegate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of the delegation." The corporation, as a private entity, would not be an employee or committee of the district to whom power to manage, control, hold, or convey real property could be delegated.

Sections 72233, 72282, and 72287, which were repealed by Chapter 973 of the Statutes of 1988, but which were in effect at the time the corporation was created, provided as follows:

"72233. On and after January 1, 1976, the governing board of any community college district, may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.

"The chancellor's office, to the extent it is able to do so within staffing constraints, shall advise and assist community college districts on the implementation and interpretation of this section."

"72282. The district governing board shall establish rules and regulations not inconsistent with the regulations of the board of governors and the laws of this state for the government and operation of one or more community colleges in the

district and delegate appropriate authority to officers, employees or committees of the district, the college, or the governing board."

"72287. The district governing board shall manage and control district property. The district governing board may contract for the procurement of such goods and services as authorized by law."
(Emphasis added.)

From the previous discussions of Section 70902, it may be seen that repealed Sections 72233, 72282, and 72287 have been recodified in Section 70902 and conferred no authority different from that which Section 70902 does now.

Thus, neither Article 4 nor any other provision expressly provides authority for the governing board to delegate its power to manage and control district real property to the corporation. Therefore, it may be concluded that the district governing board improperly delegated its responsibility for control and management of district real property in the lease of real property to the corporation.

IV. Competitive Bidding

In this section we examine whether the contract between the corporation and IDM could properly have been awarded without competitive bidding.

Section 81370, which is part of Article 4, sets forth certain substantive and procedural requirements relative to the sale or lease of real property owned by a community college district, including the requirement that, generally, the governing board of the district accept the highest conforming proposal made by a responsible bidder. Section 81370 reads as follows:

"81370. (a) At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Except as provided in subdivision (b), of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to sell or to lease and which are made by responsible bidders, the proposal which is the highest, after deducting therefrom the commission, if any, to be paid a licensed real estate broker in connection therewith, shall be finally accepted, unless a higher oral bid is accepted or the board rejects all bids.

"(b) Notwithstanding subdivision (a), the governing board of any community college district may apply to the Board of Governors of the California Community Colleges for a waiver of the requirement that the governing board accept the highest responsible bid for the sale or lease of real property. The board of governors may grant a waiver pursuant to this subdivision if it determines that the waiver is in the best interests of the community college district."
(Emphasis added.)

Thus, Section 81370 authorizes the Board of Governors of the California Community Colleges to waive the "highest responsible bid" requirement where it determines the waiver to be in the best interests of the community college district.

We have no information that the Board of Governors has waived the "highest responsible bidder" requirement in the situation at hand.

We note that, in some instances, the authority of a community college district to enter into a negotiated agreement for the use or sale of its land has been expressly enacted by the Legislature (Ch. 347, Stats. 1986 and Ch. 609, Stats. 1984). We are aware of no statute so authorizing the transactions involved in the situation under consideration here.

Generally, the courts have strictly construed competitive bidding statutes imposing these obligations on boards and municipalities, stating that the essential purpose of these statutes is to prevent the waste and improvident dissipation of public funds (Miller v. McKinnon, 20 Cal. 2d 83, 88; Paterson v. Board of Trustees, 157 Cal. App. 2d 811, 820).

More recently, a court has stated as follows:

"The purpose of requiring governmental entities to open the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition. [Citations omitted.] Because of the potential for abuse arising from deviations from strict adherence to standards which promote these public benefits, the letting of public contracts universally receives close judicial scrutiny and contracts awarded without strict compliance with bidding requirements will be set aside. This preventative

approach is applied even where it is certain there was in fact no corruption or adverse effect upon the bidding process and the deviations would save the entity money. [Citations omitted.] The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements. [Citations omitted.]" (Konica Business Machines U.S.A., Inc. v. Regents of University of California, 206 Cal. App. 3d 449, 456-457.)

Accordingly, the rule is well settled that whenever by statute the power of a board or municipality to make a contract is limited to a prescribed method to which there has been no attempt to conform, a contract attempted to be made is void, and no implied liability, even in an action on quantum meruit, can arise for the benefits received thereunder (Reams v. Cooley, 171 Cal. 150, 153-155; Strauch v. San Mateo Junior College Dist., 104 Cal. App. 462, 464-465; Seymour v. State of California, 156 Cal. App. 3d 200, 205).

This rule is illustrated in the following examples. In City of Oakland v. California Const. Co., 15 Cal. 2d 573, the city alleged that a contract with a paving contractor was void because, among other things, the work was obtained as the result of a conspiracy among certain paving companies, including the respondent, to control the street work of the city by refraining from competitive bidding. The court stated:

"The purpose of such bidding is to secure a price based upon competition. Any agreement which tends to deprive the government of competition in bidding is unlawful [citations omitted] and where it is shown that the bids made were collusive and a contract is awarded by public officers in ignorance of such a combination, the resulting contract is void as against public policy." (City of Oakland v. California Const. Co., supra, p. 578.)

In Zottman v. San Francisco, 20 Cal. 96, recovery on the theory of an implied contract for extra work which was performed by contractors in connection with a contract for the improvement of public grounds was denied because the work was not let upon competitive bidding in accord with express charter provisions. The court stated that: "The law never implies an agreement against its own restrictions and prohibitions ..., the law never implies an obligation to do that which it forbids the party to agree to do" (Zottman v. San Francisco, supra, p. 106).

The court concluded that the Common Council of the City of San Francisco could not ratify the contract because they could not do retroactively what they were prohibited from doing originally (Zottman v. San Francisco, supra, p. 103).

In Gamewell F. A. T. Co. v. Los Angeles, 45 Cal. App. 149 at page 154, it was held that recovery for the sale of fire-alarm and police telephone apparatus and material could not be had on the theories of estoppel or quantum meruit where the contract was void because it was entered into in violation of a charter provision which required competitive bidding for contracts in an amount in excess of \$500. The court stated that "Such a result would in effect nullify the protection intended to be afforded by the restrictions of the charter, by permitting liabilities to be created indirectly under conditions which are prohibited by express agreement." (Ibid.)

Although it is recognized that a district governing board, like a municipality, may, under some circumstances, be held liable upon an implied contract for benefits received by it, a recovery under an implied contract is only permissible in those cases where the board or municipality is given the general power to contract with reference to a subject matter, and the express contract entered into pursuant to this general power is rendered invalid for some mere irregularity or some invalidity in its execution. In contrast, where a contract has been entered into without compliance with the competitive bidding requirements, the express contract is not invalid merely by reason of some irregularity or some invalidity in its exercise, but the contract is void because the statute prescribed the only method in which a contract can be made. The courts have taken the view, therefore, that the adoption of the prescribed mode for the entering of a contract is a jurisdictional prerequisite to the exercise of the power to contract at all (see Reams v. Cooley, supra, pp. 153-154).

In this connection, Section 81382, which is part of Article 4, illustrates the use of a validating provision to cure an irregularity or invalidity in the execution of a contract.

Section 81382 states as follows:

"81382. The failure to comply with the provisions of this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value."

A "purchaser for value" is presumed, prima facie, to be an innocent purchaser in good faith (Scheas v. Robertson, 38 Cal. 2d 119, 128).

Although it could be contended that Section 81382 permits the district to ignore Article 4 without invalidating the transaction, we think such an interpretation would make Article 4 superfluous and meaningless and result in an absurd consequence (Clements v. T.R. Bechtel Co., 43 Cal. 2d 227, 233). A better interpretation of Section 81382 is that it is intended to preserve a transaction from invalidation due to procedural rather than jurisdictional defects, and to preclude the selling district from invoking its own failure to comply with procedures to invalidate a sale to a purchaser for value.

This view is consistent with the theory of validating acts as summarized by the Supreme Court in Miller v. McKenna, 23 Cal. 2d 774, at pages 781 and 782:

"The Legislature may cure irregularities or omissions to comply with provisions of a statute which could have been omitted in the first instance. This rule is quoted from Cooley on Constitutional Limitations, at page 457, as follows: 'If the thing wanted or failed to be done, and which constitutes the defect in the proceedings, is something the necessity for which the legislature might have dispensed with by prior statute, then it is not beyond the power of the legislature to dispense with it by subsequent statute; and if the irregularity consists in doing some act, or in the manner or mode of doing some act, and which the legislature might have made immaterial by prior law, it is equally competent to make the same immaterial by a subsequent law.'
[Citations omitted.]

"But the Legislature cannot cure defects which are sometimes termed jurisdictional. . . . While the Legislature cannot cure the omission of jurisdictional requisites, the manner of procedure, after jurisdiction is acquired and the mandates of due process are complied with, are matters within the legislative discretion and may be subjected to the exercise of the healing power so long as further constitutional inhibitions are observed."

Thus, because the adoption of a prescribed mode for entering into a contract is a jurisdictional prerequisite to the exercise of the power to contract at all (Reams v. Cooley, supra, at pp. 153-154) and because validating acts cannot be used to cure jurisdictional defects, we think the proper construction of Section 81382 is that it validates only procedural defects in a

transaction under Article 4 and does not permit dispensing with substantive requirements of Article 4 with respect to competitive bidding.

The courts have created exceptions permitting the waiver of express statutory competitive bidding requirements in certain circumstances.

In Shore v. Central Contra Costa Sanitary Dist., 208 Cal. App. 2d 465, the court held that a sanitary district which had complied with specified statutes prior to entering into a contract for the construction of a sewer line did not, on the contractor's default, abandon the contract, but merely exercised its rights under the contract to terminate the contractor's employment, and in entering into a contract with another contractor to complete the work the district was not letting a new and separate contract but was proceeding under the old contract and thus was under no obligation to republish notice requesting bids. This exception has been characterized as the "continuing contract exception" (Id., at p. 468).

The so-called "emergency exception" is exemplified by the case of Los Angeles Dredging Co. v. Long Beach, 210 Cal. 348. In that case the court determined that a city had discretion to forego bidding requirements before entering into an oral contract regarding dredging operations because of possible pollution to a beach area and because the city charter specified the manner in which emergency contracts could be made without the necessity of competitive bidding (Id., at pp. 355-356).

In Meakin v. Steveland, Inc., 68 Cal. App. 3d 490, compliance with a city charter provision requiring the city to advertise for competitive bids was excused because the only potential buyers for the city's interest in a former street were abutting landowners and it appeared they were willing to pay the full appraised value of the property.

A final and broader category of exception to the requirement that prescribed competitive bidding procedures must be complied with is described in Graydon v. Pasadena Redevelopment Agency, 104 Cal. App. 3d 631 (cert. den. 66 L. Ed. 2d 246) (hereafter, Graydon). In Graydon, the contention was that negotiated contracts between a redevelopment agency and a developer for the construction of a subterranean garage for a retail shopping center development project were illegal because they were let without competitive bidding. The court held that the contracts were valid because they came within an exception "where the nature of the subject of the contract is such that competitive proposals would be unavailing or would not produce an advantage, and the advertisement for competitive bid would thus be

undesirable, impractical, or impossible." (Citations omitted; Graydon, supra, pp. 635-636.)

The Graydon court continued: "The rationale for the adoption of the above exception is found in the purposes of the provisions requiring competitive bidding in letting public contracts. Those purposes are to guard against favoritism, improvidence, extravagance, fraud, and corruption; to prevent the waste of public funds; and to obtain the best economic result for the public. [Citation omitted.] However, the competitive bid requirement is to be construed fairly and reasonably with sole reference to the public interest and in light of the purposes to be accomplished. [Citations omitted.] Therefore, it has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable [citations omitted.]" (Graydon, supra, p. 636.)

In our view, the facts do not come within the court-created continuing contract exception or emergency exception as discussed above. Nor do the facts present a case where there is only one potential bidder as in the case of Meakin v. Steveland, Inc., supra, discussed above.

The final exception raised in the Graydon case and others was "where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form," (Graydon, supra, p. 636.)

In our opinion, absent pertinent matters unknown to us, the facts concerning the sublease of the district real property to IDM cannot be said to come within the scope of this exception. On the basis of the facts available to us, it would only be speculation that competitive bidding would work an incongruity, would be unavailing as affecting the final result, or would not produce any advantage, and nothing in the facts available to us indicates that it was practically impossible to obtain what is required in the sublease or to observe the formalities of competitive bidding.

To reiterate, the contract subleasing the district real property to IDM was negotiated between the corporation and IDM and did not result from the competitive bid process required in Section 81370 and following. Those provisions make no exception nor do they permit a waiver other than the waiver from the Board

of the California Community Colleges, as specified in subdivision (b) of Section 81370.

Nothing in the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of the Corporations Code) grants such a corporation broader powers than the community college district would itself possess. Section 5111 of the Corporations Code provides that "[s]ubject to any other provisions of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any public or charitable purposes" (emphasis added).

Thus, the contract leasing the district real property to IDM would be required to be awarded pursuant to the bid process prescribed in Article 4 (commencing with Section 81360) of Chapter 2 of Part 49 unless a waiver had been obtained from the Board of Governors of the California Community Colleges pursuant to subdivision (b) of Section 81370.

V. The Corporation as an Auxiliary Organization of the District

In addition to the broad grant of authority conferred upon the governing boards of community college districts by Section 72233 (now Sec. 70902), described in I above, Article 6 (commencing with Section 72670) of Chapter 7 of Part 45³ provides specific authority for the governing boards of community college districts to establish auxiliary organizations.

Section 72670 expressly authorizes the governing board of a community college district to establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges. The scope of the term "auxiliary organization" includes two categories of entities pertinent to this discussion. First, it includes any entity whose governing instrument provides in substance both of the following:

(1) Its purpose is to promote or assist a community college or district, or to receive gifts, property and funds to be used for the benefit of the community college or district or any person or organization having an official relationship therewith.

(2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district,

³ Hereafter, Article 6.

or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district (subd. (d), Sec. 72670).

Secondly, an auxiliary organization includes any entity that is designated as such an auxiliary organization by the district governing board (subd. (e), Sec. 72670).

In either case, auxiliary organizations are subject to administrative regulations of the Board of Governors of the California Community Colleges contained in Chapter 4.5 (commencing with Section 59250) of Division 10 of Title 5 of the California Code of Regulations (subd. (a), Sec. 59250, Ch. 4.5, Div. 10, Title 5, Cal. Code Regs.).⁴ Section 59259 of Chapter 4.5 describes the functions to be undertaken and the supportive services and specialized programs that may be developed and operated by auxiliary organizations and provides as follows:

"59259. Recognized Functions.

"The functions to be undertaken by auxiliary organizations are for the purpose of providing activities which are an integral part of the community college educational programs. The following supportive services and specialized programs which may be developed and operated by auxiliary organizations have been determined by the Board of Governors to be appropriate:

"(a) Student association or organization activities;

"(b) Bookstores;

"(c) Food and campus services;

"(d) Student union programs;

"(e) Facilities and equipment;

"(f) Loans, scholarships, grants-in-aids;

"(g) Workshops, conferences, institutes, and federal projects;

"(h) Alumni activities;

⁴ Hereafter, Chapter 4.5.

"(i) Supplementary health services;

"(j) Gifts, bequests, devises, endowments and trusts; and

"(k) Public relations programs.

"The Chancellor shall periodically report to the Board of Governors on the extent to which auxiliary organizations formed pursuant to this chapter are performing each of the functions recognized in this section."

As can be seen, an auxiliary organization established by the governing board of a community college may undertake any or all of a variety of functions in support of a community college, but these functions do not include management and control of district real property.

In our view, an auxiliary organization established pursuant to Article 6 may include a corporation established in support of a community college. Support for this contention is found in parallel provisions governing auxiliary organizations established for the benefit of the California State University (Ch. 7 (commencing with Sec. 89900) Pt. 55).⁵ In Coppernoll v. Board of Directors, 138 Cal. App. 3d 915, a California appellate court considered a case concerning an employee of a state university foundation, a nonprofit auxiliary organization formed under Chapter 7 to manage funds, grants in aid, endowments, gifts, bequests, loans, and scholarships for the university (Id., at p. 920). The court, without discussion of the propriety of the formation of the foundation under Chapter 7, reversed the trial court's denial of the employee's petition for writ of mandate, which alleged that the employee's termination of employment by the foundation violated his procedural due process rights by denying him the opportunity for a fair hearing before discharge (Id., at pp. 917, 922).

As noted above, the law governing the establishment of auxiliary organizations by the governing board of a community college district parallels the law relating to the establishment of auxiliary organizations of the California State University (see

⁵ Hereafter, Chapter 7.

Senate Committee on Education, Staff Analysis of A.B. 2627, as amended June 18, 1980, which, as Chapter 858 of the Statutes of 1980, added Article 6). Given that parallel and the fact that a foundation established in support of the California State University pursuant to Chapter 7 has been recognized by the courts, we think the governing board of a community college district may establish a corporation in support of a community college pursuant to Article 6. However, such a corporation may not be delegated the authority to manage and control district real property, because of the provisions of Article 4, as discussed above.

VI. Conflict of Interest

In this section, we discuss whether it is a conflict of interest for the superintendent of the district to serve as a director of the corporation.

Various provisions of law, commonly referred to as "conflict of interest" provisions, prohibit public officials from having any financial interest in contracts made by them in their official capacity or by any body or board of which they are members (Secs. 1090-1097, incl., Gov. C.), and prohibit public officials from participating in or attempting to influence governmental action or decisions relating to matters in which the official has economic interest (Secs. 87100-87103, incl., Gov. C.).

While the superintendent may be an officer of a district (Sec. 1090, Gov. C.) or a public official (Sec. 87100, Gov. C.), as an officer or employee of a local government agency (2 Cal. Code Regs. 18700), based on the facts provided, the superintendent has no financial interest in the only transaction between the district governing board and the corporation, the lease of the real property, and receives no compensation from the corporation. Thus, based on the facts presented there is no financial conflict of interest.

Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code authorizes a local agency to adopt rules to prohibit local agency officers or employees from engaging in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties or the duties, functions, or responsibilities of his or her appointing power or the agency

by which he or she is employed (Sec. 1126; Mazzola v. City and County of San Francisco, 112 Cal. App. 3d 141, 153-155). "Local agency" includes a district (Sec. 1125).

Outside employment must be approved by the appointing power (Sec. 1126). Outside employment may be prohibited if it:

"1126. * * *

"(b) * * *

"(1) involves the use for private gain or advantage of his or her local agency time, facilities, equipment and supplies; or the badge, uniform, prestige, or influence of his or her local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his or her local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his or her local agency employment or as a part of his or her duties as a local agency officer or employee or, (3) involves the performance of an act in other than his or her capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement of any other officer or employee or the agency by which he or she is employed, or (4) involves the time demands as would render performance of his or her duties as a local agency officer or employee less efficient."

As stated above, the superintendent does not engage in the activities of the corporation for compensation, and thus the prohibitions of paragraphs (1) and (2) of subdivision (b) of Section 1126 are inapplicable. Further, whether or not the district has adopted rules implementing Section 1126, precisely because it is the district board which has required the superintendent to act as a director of the corporation, we think the board has acknowledged and approved the dual positions and implicitly exempted the superintendent from conflicts arising under paragraphs (3) and (4) of subdivision (b) of Section 1126 (cf. Mazzola v. City and County of San Francisco, supra).

Mr. Kurt R. Sjoberg - p. 21 - #21488

However, as stated above, while the district board does have the authority to create a nonprofit corporation, the trustees may not delegate to that corporation the responsibility for the management and control of district real property. Moreover, the superintendent, like all public officers, is required to obey the law (Wirin v. Parker, 48 Cal. 2d 890, 894; Common Cause v. Board of Supervisors, 49 Cal. 3d 432, 440) and consequently could take no actions concerning the management and control of district real property as the director of the corporation.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By 
Paul Antilla
Deputy Legislative Counsel

PA:kg

cc: Senator Ken Maddy, Vice Chairman
Joint Legislative Audit Committee

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January 31, 1991

APPENDIX B

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Riverside Community College District/Riverside
Community College Foundation - #23060

Dear Mr. Sjoberg:

You have submitted the following statement to us,
together with the attachments referenced therein:

"We are conducting an audit of the Riverside
Community College District (district). We have
questions regarding the relationship between the
district and the Riverside Community College
Foundation (RCC Foundation), a separate nonprofit
corporation.

"The RCC Foundation was incorporated in 1976
and is organized pursuant to the California
Nonprofit Corporation Law. In summary, the purpose
of the RCC Foundation is to assist the district by
soliciting and receiving gifts, property, and funds
for the benefit of the district. One of the
directors of the RCC Foundation is chosen by and
from the Board of Trustees of the district and the
president/superintendent of the district serves as
an ex-officio director. Refer to attachment 1 for
the RCC Foundation's articles of incorporation and
bylaws.

"The district has not established the RCC Foundation as an auxiliary organization of the district pursuant to Education Code Section 72760 et seq. These Education Code sections authorize community college districts to establish auxiliary organizations. The operations of an auxiliary organization must be in accordance with regulations (Title 5, Sections 59250 to 59276 of the California Code of Regulations) of the Board of Governors of the California Community Colleges and in accordance with implementing regulations established by the district governing board. Refer to attachment 2 for a package of information that includes the above referenced laws and regulations and a checklist for preparing implementing regulations.

"The district states that the RCC Foundation follows the same accounting and administrative procedures as the district, but the district does not intend to (formally) establish the RCC Foundation as an auxiliary.

"The district believes that there are certain limitations and disadvantages to establishing the RCC Foundation as an auxiliary organization. For example, the district stated that it would not be eligible for certain grants, (i.e., from other nonprofit foundations) if the RCC Foundation was an auxiliary organization pursuant to the Education Code. In addition, the district said that "auxiliary status" might affect the tax-exempt status of the RCC Foundation and might affect State funding for the district.

"All employee related functions of the RCC Foundation are provided by district personnel. With the approval of the Board of Trustees of the district, the district pays the salaries of the director and other support staff of the RCC Foundation. The director of the RCC Foundation is responsible for the overall development and coordination of the RCC Foundation policies, procedures, and activities subject to policies set by the RCC Foundation Board of Directors. The activities of the director include fund raising and public relations for the RCC Foundation. The support staff provide clerical, banking, accounting, and other services for the RCC Foundation. In addition to the staff and services

described above, the district provides free office space for the RCC Foundation. Refer to attachment 3 for district trustees' policy no. 6140 and related regulations regarding the RCC Foundation. Refer also to attachment 4 for district trustees' policy no. 3040 and related regulations for approved (annual) salary schedules. Finally, refer to attachment 5 for excerpts from the RCC Foundation's audited financial statements that describe the above arrangement as 'donated services.'

"At issue is whether the district must establish as an auxiliary organization a nonprofit corporation that has the purpose, operations, and directorship of the RCC Foundation. ...

"Also at issue is whether the district has the authority to pay the salaries of the director and other support staff of the RCC Foundation and to provide free office space for the RCC Foundation. There are no 'implementing regulations' and there is no specific written agreement that describes the arrangement between the district and the RCC Foundation, as would be required for an auxiliary organization under Title 5, Section 59257(j). However, the district believes that its arrangement with the RCC Foundation is legal and provided the following information as support [for] its position:

"The director of the RCC Foundation, who also serves as executive assistant to the president/superintendent of the district, reports directly to the president of the district. Refer to attachment 6 for the director's job description and attachment 7 for the district's organizational chart. In addition, the president and other administrators of the district prepare annual objectives for the district. These objectives include the responsibilities of the director of the RCC Foundation, (refer to attachment 8 for excerpts from the annual objectives). Finally, under the regulations for district trustees' policy no. 6140, (attachment 3), the employment procedures for the director of the RCC Foundation must be consistent with the policies and practices of the district. For example, the director stated that the president of the district evaluates her job performance and that a committee of RCC Foundation board members

and district staff conducted the interviews for hiring the director.

"'The RCC Foundation serves a necessary and desirable function to accept gifts, donations, etc. for the district and exists only for the benefit of the district. For example, the RCC Foundation recently donated to the district land that had an appraised value of over \$1 million at June 30, 1989. Refer to attachment 5 for excerpts from the audited financial statements of the RCC Foundation. In addition, the regulations for district trustees' policy no. 6140, (attachment 3), require the RCC Foundation to present periodic reports to the district that summarize the activities of the RCC Foundation.'"

In this connection you have asked us to discuss whether the Riverside Community College Foundation (hereafter foundation) would be considered to be an auxiliary organization of the Riverside Community College District (hereafter district) and, thus, would be required to comply with the provisions of Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of the Education Code¹ (hereafter Article 6) and Chapter 4.5 (commencing with Section 59250) of Title 5 of the California Code of Regulations (hereafter Chapter 4.5), notwithstanding that the district chooses not to designate the foundation as an auxiliary organization. You have also asked us to discuss whether the foundation must reimburse the district for services performed by the executive assistant to the president of the district and other district support staff who provide services to the foundation as well as for office space and other facilities provided to the foundation by the district, notwithstanding whether it has been designated an auxiliary organization by the governing board of the district under Article 6 and Chapter 4.5.

With respect to the general authority of the governing boards of community college districts, Section 14 of Article IX of the California Constitution authorizes the Legislature to authorize the governing boards of all school districts, including community college districts, to initiate and carry on any programs and activities, or to otherwise act in any manner that is not in conflict with the laws and purposes for which school districts are established.

¹ All section references are to the Education Code, unless otherwise indicated.

Pursuant to that constitutional authorization, the Legislature enacted Section 7503.5 of the Education Code (repealed by Chapter 1010 of the Statutes of 1976, but in effect at the time of incorporation of the RCC foundation (January 1976); see now, Sec. 70902) which authorized the governing board of any community college district to initiate and carry on any program, activity, or otherwise act in any manner that was not in conflict or inconsistent with, or preempted by, any law and that was not in conflict with the purposes for which school districts are established.

In addition to the broad grant of authority conferred upon the governing boards of community college districts, Section 70902 requires governing boards to provide auxiliary services as deemed necessary to achieve the purposes of the community college (para. (11), subd. (b)). Article 6 provides specific authority for the governing boards of community college districts to establish auxiliary organizations.

Section 72670 expressly authorizes the governing board of a community college district to establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges. It provides:

"72670. The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges. As used in this article, 'auxiliary organization' may include, but is not limited to, the following entities:

"(a) Any entity in which any official of a community college district participates as a director as part of his or her official position.

"(b) Any entity formed or operating pursuant to Article 4 (commencing with Section 76060) of Chapter 1 of Part 47.

"(c) Any entity which operates a commercial service for the benefit of a community college or district on a campus or other property of the district.

"(d) Any entity whose governing instrument provides in substance both of the following:

"(1) Its purpose is to promote or assist a community college or district, or to receive gifts, property and funds to be used for the benefit of the community college or district or any person or organization having an official relationship therewith.

"(2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district, or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district.

"(e) Any entity which is designated as an auxiliary organization by the district governing board."

Administrative regulations governing auxiliary organizations established by the governing boards of community college districts are contained in Chapter 4.5. Section 59259 of Chapter 4.5 describes the functions to be undertaken and the supportive services and specialized programs that may be developed and operated by auxiliary organizations and provides as follows:

"59259. Recognized Functions.

"The functions to be undertaken by auxiliary organizations are for the purpose of providing activities which are an integral part of the community college educational programs. The following supportive services and specialized programs which may be developed and operated by auxiliary organizations have been determined by the Board of Governors to be appropriate:

"(a) Student association or organization activities;

"(b) Bookstores;

"(c) Food and campus services;

"(d) Student union programs;

"(e) Facilities and equipment;

"(f) Loans, scholarships, grants-in-aids;

"(g) Workshops, conferences, institutes, and federal projects;

"(h) Alumni activities;

"(i) Supplementary health services;

"(j) Gifts, bequests, devises, endowments and trusts; and

"(k) Public relations programs.

"The Chancellor shall periodically report to the Board of Governors on the extent to which auxiliary organizations formed pursuant to this chapter are performing each of the functions recognized in this section."

As can be seen, an auxiliary organization established by the governing board of a community college may undertake any or all of a variety of functions in support of a community college.

Thus, we think an auxiliary organization established pursuant to Article 6 may include a foundation established in support of a community college. Support for this contention is found in parallel provisions governing auxiliary organizations established for the benefit of the California State University (Ch. 7 (commencing with Sec. 89900), Pt. 55; hereafter Chapter 7). In Coppernoll v. Board of Directors, 138 Cal. App. 3d 915, a California appellate court considered a case concerning an employee of a state university foundation, a nonprofit auxiliary organization formed under Chapter 7 to manage funds, grants-in-aid, endowments, gifts, bequests, loans, and scholarships for the university (Id., at p. 920). The court, without discussion of the propriety of the formation of the foundation under Chapter 7, reversed the trial court's denial of the employee's petition for writ of mandate, which alleged that the employee's termination of employment by the foundation violated his procedural due process rights by denying him the opportunity for a fair hearing before discharge (Id., at pp. 917, 922). Thus, there is precedent for the establishment of a foundation for the support of the California State University as an auxiliary organization under Chapter 7.

As noted above, the law governing the establishment of auxiliary organizations by the governing board of a community college district parallels the law relating to the establishment of auxiliary organizations of the California State University (see Senate Committee on Education, Staff Analysis of A.B. 2627, as amended June 18, 1980, which, as Chapter 858 of the Statutes of

1980, added Article 6). Given that parallel and the fact that a foundation established in support of the California State University pursuant to Chapter 7 has been upheld, we think the governing board of a community college district may establish a foundation in support of a community college pursuant to Article 6 consistent with the description of supportive services and specialized programs described in Section 59259 of Chapter 4.5.

Having concluded that a foundation in support of a community college district may be established as an auxiliary organization pursuant to Article 6 and Chapter 4.5, we turn to the question of whether a foundation which falls within the definition of an auxiliary organization under the statute is an auxiliary organization and must abide by the provisions of Article 6 and Chapter 4.5 if the district's governing board chooses not to designate the foundation as an auxiliary organization.

As indicated in the background statement of your letter of request and its supporting attachments, the governing board of the district has established the foundation as an affiliated, supporting organization in a number of ways, such as the following:

(1) It has officially established the foundation as the exclusive organization to accept gifts, grants, donations, and bequests on behalf of the district (Policy No. 6140 approved March 6, 1984, Attachment 3 to the letter of request).

(2) It has directed the foundation to pursue a coordinated program of fundraising from governmental, business, and community sources to assist in supporting the college's goals and objectives. (Id.)

(3) It requires the foundation's board of directors to report to the district's governing board periodically on the foundation's activities. (Id.)

(4) It requires all nominees for the foundation's board of directors to be approved by the district's superintendent/president. (Id.)

(5) It requires the foundation's board of directors to meet periodically. (Id.)

(6) It has authorized employment positions with the foundation to be paid by the district and requires employment procedures to be consistent with personnel policies and practices of the district. (Id.)

(7) It has established the executive assistant to the president of the district as a director of the foundation with a prescribed salary and specifically prescribed duties and responsibilities for the management of the foundation (Policy No. 3040/4040 approved October 1, 1985, Attachment 4 to the letter of request; Classified Management Position Description dated January 1, 1990, Attachment 6 to the letter of request and Riverside Community College District Organization Chart, dated June 29, 1990, Attachment 7 to the letter of request).

Similarly, the foundation has formally connected its operations with the district. Its Articles of Incorporation designate the president/superintendent of the district as an ex-officio director of the foundation and its bylaws additionally require one of its directors to be chosen by the district's governing board (Attachment 1 to the letter of request). Moreover, its financial statement indicates that all employee-related functions of the foundation and office space are provided by the college and attaches a specific monetary value to those services (Attachment 5 to the letter of request).

In view of this interrelationship of the district and foundation, we think the foundation would be considered to be an auxiliary organization within the meaning of Section 72670 of Article 6 and Section 59259 of Chapter 4.5. Specifically, with respect to Section 72670, the foundation would be an "... entity in which any official of a community college district participates as a director as part of his or her official position" (subd. (a), Sec. 72670) and an "... entity whose governing instrument provides in substance both of the following:

"(1) Its purpose is to promote or assist a community college or district, or to receive gifts, property and funds to be used for the benefit of the community college or district or any person or organization having an official relationship therewith.

"(2) Any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the governing board of the district, an official of the district, or selected, ex officio, from the membership of the student body or the faculty or the governing board or the administrative staff of the district."

With respect to Section 59259, the foundation would perform the functions set forth in subdivisions (f) and (j) thereof regarding the solicitation and administration of loans, scholarships, gifts, bequests, devises, endowments, and trusts

(see Article II, Articles of Incorporation, Attachment 1 to the letter of request).

Section 72670 was added by Chapter 858 of the Statutes of 1980, to ameliorate then existing provisions relating to auxiliary organizations. The prior law (Sec. 72670, added by Sec. 2, Ch. 1010, Stats. 1976), which authorized community colleges to establish auxiliary organizations to provide supportive services and specialized programs, did not provide the same degree of regulation and accountability of auxiliary organizations as required of state colleges and universities. Thus, Chapter 858 granted community college district governing boards oversight authority over auxiliary organizations patterned after the law relating to the California State University (see Section 89900 and following and Assembly Committee on Education, Staff Analysis of A.B. 2627, April 9, 1980).

Moreover, the Department of Finance, in its enrolled bill report on A.B. 2627 pointed out:

"Existing provisions do not provide for sufficient regulation and accountability of auxiliary organizations. Since these organizations are affiliated with the colleges, often representing them, greater oversight and financial review similar to that for auxiliary organizations in State colleges and universities is desirable.

"Because there is currently no review by the Chancellor, no record exists of the number of organizations Statewide, their activities, or their revenues and expenditures. However, as a point of comparison, the State colleges' auxiliary organizations expenditures totaled \$136.8 million in 1977-78. Even if community college organizations expend only a fraction of that amount, they should be subject to strict accountability provisions." (Enrolled Bill Report, Department of Finance, Aug. 27, 1980.)

Section 72670 was amended to its current form by Chapter 470 of the Statutes of 1981 as part of the "streamlining" of the Education Code. The changes made by this revision did not alter the kinds of entities included in the statute's definition of "auxiliary organization." Moreover, as stated in Section 1 of Chapter 470:

"It is the intent of the Legislature in enacting this act to update and streamline the Education Code as it pertains to community colleges.

"The Legislature finds and declares that government rulemaking which is unnecessary, overburdensome or confusing wastes resources which the state cannot afford to waste. The Legislature further finds that the Education Code, as it pertains to community colleges, continues to regulate closely community college districts in a manner similar to school districts, rather than as higher education entities.

"This act repeals or amends provisions which are unnecessarily burdensome, repeals outdated provisions, repeals redundant provisions, and harmonizes conflicting provisions so as to make the Education Code more realistic, clear, up-to-date, and concise as it relates to community colleges. By making these changes, the Legislature intends to promote a more efficient utilization of resources within the community colleges. In addition, the Legislature also intends to increase local control and flexibility in the administration and governance of community colleges by reducing the number of statutes which unnecessarily dictate the specifics of college operations.

"It is not the intent of the Legislature in enacting this act to divest any community college employee of any previously accrued rights which may have been obtained pursuant to any statutes which have been amended or repealed by this act."
(Emphasis added.)

By reenacting Section 72670 and leaving Article 6 essentially unchanged, as part of its updating of the Education Code relating to community colleges, we think the Legislature affirmed the substance of the provisions of that article. Hence, while statutes that were deemed unnecessarily prescriptive as to community college authority were eliminated by Chapter 470 of the Statutes of 1981, we think those statutes left in place were deemed necessary restrictions on that authority.

Other provisions of Article 6 exemplify the Legislature's desire to regulate those organizations which provide auxiliary services to districts contemplated by Section 70902 and described in Section 72670. For example, Section 72672 sets forth

requirements of auxiliary organizations relating to auditing and reporting procedures, oversight responsibilities of the college president or district superintendent where the organization primarily serves a single community college or a district, and regulations which must be established to further the purposes and operations of the organizations. Subdivision (a) of this section provides: "A certified public accountant shall be selected by each auxiliary organization described in Section 72670." This language indicates that those organizations which provide the auxiliary services, or meet a definition, described in the section, are deemed "auxiliary organizations" for purposes of Article 6 and, therefore, are subject to its provisions.

Moreover, Section 72674, relating to boards of directors of auxiliary organizations, requires each board to conduct its business in public meetings according to the provisions of the Ralph M. Brown Act (Ch. 9 (commencing with Sec. 54950), Div. 2, Title 5, Gov. C.). This provision alone is a significant indication that the Legislature, by enacting Chapter 858 of the Statutes of 1980, intended organizations which meet the definitions set forth in Section 72670 and which provide auxiliary services to a community college or district to be governed by the provisions of Article 6. The statement of intent contained in Section 54950 explains the importance the Legislature has ascribed to open meetings:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

To uphold a community college district's determination that an organization which provides auxiliary services and meets the definition of an auxiliary organization under Section 72670 is not an auxiliary organization and thus avoids the requirements of Article 6, would circumvent the intent of the Legislature in this regard to make an organization which serves a public institution

subject to the open meeting requirements of the Ralph M. Brown Act.

Additionally, Section 72673 specifically exempts certain student body organizations and other associations from the provisions of Article 6 unless one of these organizations or associations has been established as an auxiliary organization pursuant to Article 6. This section would have been unnecessary if only those organizations which have been designated by a district were deemed to be auxiliary organizations for purposes of Article 6. It demonstrates that the Legislature intended that all organizations meeting the definitions of auxiliary organizations set forth in Section 72670 are as a matter of law auxiliary organizations for purposes of Article 6 and subject to its provisions. The creation of a limited express exemption suggests that a broader implied exemption could not have been intended (see Wildlife Alive v. Chickering, 18 Cal. 3d 190, 196).

Finally, in this regard, it is an established principle of statutory construction that any express grant of power by the Legislature is, impliedly, to be exercised only in the prescribed manner (Wildlife Alive v. Chickering, supra at p. 196).

Thus, we think it was the intent of the Legislature in enacting Chapter 858 of the Statutes of 1980 to require all entities which fall within the definition of "auxiliary organization," as set forth in Section 72670, to comply with the provisions of Article 6 whether or not they are "designated" as auxiliary organizations.

Therefore, we are of the opinion that the foundation meets the definition of, and thus has been established by the district governing board through its official acts as an auxiliary organization under Article 6 and, consequently, it must comply with the applicable provisions of that article and Chapter 4.5 of Title 5 of the California Code of Regulations.

We next consider whether the foundation is required to reimburse the district for services performed for the foundation by the staff of the district as well as for office space and other facilities provided to the foundation by the district. Under the current law, Article 6 does not address this matter. However, subdivision (c) of Section 59257 of the California Code of Regulations provides in pertinent part:

"Each district governing board wishing to establish an auxiliary organization must adopt implementing regulations, and submit such regulations to the Chancellor for approval. The

implementing regulations must contain provisions which address at least the following subjects:

"... (j) Provisions which shall specify the following:

"(4) The facilities to be made available, if any, by the district to permit the auxiliary organization to perform the functions specified in the implementing regulations or written agreement;

"(5) The charge or rental to be paid to the district by the auxiliary organization for any district facilities used in connection with the performance of its function. The charge or rental specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the auxiliary organization may determine to what extent it shall be liable therefor;

"(6) Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable;

* * *

Therefore, under the regulations which implement Article 6, an auxiliary organization must be required by the district board to reimburse the district for district facilities used in connection with the performance of its function and for services performed by district employees under the direction of the auxiliary organization.

Section 72682, however, provides:

"An auxiliary organization which was in existence on August 31, 1980, shall continue to operate under the provisions of Article 6 (commencing with Section 72670) of Chapter 6 of Part 45, as it read immediately prior to August 30, 1980, until such time, if any, as the organization is approved pursuant to this article." (Emphasis added.)

Additionally, subdivision (c) of Section 59250 of the California Code of Regulations provides:

"(c) An auxiliary organization which was in existence on or before August 31, 1980, may continue to operate under the provisions of Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code, as it read on August 30, 1980. Such organizations, however, shall operate only in accordance with the provisions of former Article 6, and shall not, unless established and maintained in accordance with the provisions of this chapter, be vested with any additional authority or flexibility that may be provided by this chapter and the current Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code."

Article 6, as it read prior to August 30, 1980, states in pertinent part:

"72670. The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of students, as determined by the governing board, and which are not provided by the general fund of the district. Such services and programs shall be consistent with the purposes of the college and shall conform with the policies and regulations of the governing board. Commercial services operated by an auxiliary organization shall be self-supporting. Nothing in this article shall be construed as granting to any auxiliary organization any power which exceeds any power of a governing board of a community college district.

* * *

"72673. Any employee, not a student or substitute employee, employed by an auxiliary organization shall be a member of the classified service of the district."

There were no published regulations in the California Administrative Code implementing this statute.

Under the pre-1980 law, not only was there no requirement that an auxiliary organization reimburse a district for district facilities used in the performance of its function and for services performed by district employees under the direction of the auxiliary organization, there was a requirement

that persons employed by an auxiliary organization be members of the classified service of the district. We think this requirement would necessarily include the use of office facilities which would normally be provided to members of the classified service of the district.

The background statement summarized above and supplementary information provided to us indicates that the foundation was formed and incorporated in 1975-76 for the exclusive purpose of supporting the Riverside Community College by soliciting and receiving funds and holding property to be used for establishing scholarships and loans for students. The incorporators were largely members of the board of trustees and staff of the college. Although the documents indicate that the foundation was not particularly active until after 1980, its board met semiannually and it did raise some funds. Thus, we think the information provided does establish that the foundation was in existence prior to August 30, 1980, within the meaning of Section 72682 and subdivision (c) of Section 59250 of the California Code of Regulations.

However, we also think the actions taken by the district governing board beginning in 1984, set forth above and described in attachments 3, 4, 6, and 7 to the letter of request, demonstrate the establishment and approval, and continuance in operation, of the foundation by the district as an auxiliary organization within the meaning of Section 72682 and subdivision (c) of Section 59250 of the California Code of Regulations. For example, Policy No. 6140, approved by the district board on March 6, 1984, (Attachment 3) formally established the foundation as the entity through which all gifts, grants, donations, and bequests to the district will be accepted. Moreover, this policy directive required the foundation to pursue a coordinated program of fundraising from governmental, business, and community sources to assist in supporting the college's goal and objectives. Additionally, regulations adopted by the district approved by the board on the same date impose specific requirements on the foundation relating to the implementation of this policy directive.

We think that the action of the district board, starting in 1984, effectively transformed the foundation from a nascent appendage of the college into a significant arm with well-defined fundraising powers and obligations, resulting in application of the requirement that the ongoing operations of the foundation be subject to existing law. Accordingly, we conclude that the foundation is required to operate under the current provisions of Article 6 and Chapter 4.5.

Mr. Kurt R. Sjoberg - p. 17 - #23060

To summarize then, we are of the opinion that the foundation is an auxiliary organization of the district and, therefore, is required to comply with the provisions of Article 6 and Chapter 4.5, notwithstanding that the district chooses not to designate the foundation as an auxiliary organization. These provisions require the district to adopt regulations which, among other things, specify the charge or rental to be charged to the foundation by the district for any district facilities used in connection with the performance of its function and specify full reimbursement to the district for services performed by district employees under the direction of the foundation. Consequently, these provisions would preclude the district from providing unreimbursed employee services and office space to the foundation.

Very truly yours,

Bion M. Gregory
Legislative Counsel

David B. Judson

By
David B. Judson *13*
Deputy Legislative Counsel

DBJ:fw

cc: Honorable Ken Maddy, Acting Chairman
Joint Legislative Audit Committee

RIVERSIDE COMMUNITY COLLEGE DISTRICT

serving the school districts of ALVORD • CORONA/NORCO • JURUPA • MORENO VALLEY • RIVERSIDE • VAL VERDE

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BOARD OF TRUSTEES:

Dorothy Gates
Patsy McCoy
Alan Pauw
Mark Takano
Ann Veltum

SUPERINTENDENT/PRESIDENT

Charles A. Kane

May 28, 1991

Mr. Kurt R. Sjoberg
Auditor General (acting)
State of California
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Sjoberg:

Each year the Riverside Community College District undergoes a financial audit of all funds and accounts, including the RCC Foundation and RCCD Development Corporation. Additionally, special audits in response to specific allegations against the District were conducted in 1987 and 1988 by the Riverside County Grand Jury. The Grand Jury reports indicated there was no evidence to support the allegations of impropriety.

This audit by the Office of the Auditor General was welcomed by the District as an opportunity to conclude a continuing series of allegations of management misconduct. The report states that approximately 75 allegations were reviewed; of these 75, six areas were of some concern. Sixty-nine spurious allegations were reviewed, discussed and/or set aside by the auditors, and apparently found to be without merit.

Under the "scope and methodology," the auditors briefly categorize the kinds of allegations made against the District. The report states, "Finally, some allegations related to personal disagreement with the management style of the district, professional judgment, and other issues we could not audit." The report subordinates the political motivation that prompted the audit. No strong statement is included which emphasizes the personal nature of the disagreements with the District.

No evidence of misconduct or malfeasance was discovered by this audit. The District accepts some criticism for procedural errors, and has implemented corrective measures. However, it is perplexing to find the report does not speak to the quality of the institution, to its overall fiscal responsibility. ①* There is a distinct paucity of support for the original set of allegations.

*The Office of the Auditor General's comments on this response begin on page 113.

Mr. Kurt R. Sjoberg
May 28, 1991
Page 2

Finally, the Table of Contents contained in the report is of grave concern to us because its tone appears to be accusatory and inflammatory. ② Following this letter, a substitute Table of Contents more neutral in tone is submitted for your consideration. A summary of the District response is then followed by a more detailed response. This structure was selected to provide you and subsequent readers of the response with greater clarity and an opportunity to better understand the facts as they relate to the recommendations.

Because no Board of Trustee meeting was scheduled during the five working days allowed for response, no response from the Board of Trustees would be appropriate. This response is the response of District management. Each of the five members of the Board of Trustees has had the opportunity to review the document and provide input. A position paper from two of the trustees is included as an attachment.

Sincerely,



Dr. Charles A. Kane
Superintendent/President
Riverside Community College District

jc

cc: Dr. Dorothy Gates, President, RCC Board of Trustees
Mr. Alan Pauw, Vice President, RCC Board of Trustees
Mrs. Patsy McCoy, Secretary, RCC Board of Trustees
Mr. Mark Takano, Member, RCC Board of Trustees
Ms. D. Ann Veltum, Member, RCC Board of Trustees

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RIVERSIDE COMMUNITY COLLEGE DISTRICT

DISTRICT RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL'S REPORT

I. Summary

This audit by the Office of the Auditor General was welcomed by the District as an opportunity to conclude the series of allegations of management misconduct. The report states that approximately 75 allegations were reviewed; of these 75, six areas were of some concern. Sixty-nine spurious allegations were reviewed, discussed and set aside by the auditors, and apparently found to be without merit.

No evidence of misconduct or malfeasance was discovered by this audit. The District accepts some criticism for procedural errors, and has implemented corrective measures. However, it is perplexing to find that the report does not speak to the quality of the institution, to its overall fiscal responsibility.^① There is a paucity of support for the original set of allegations.

AUDITOR GENERAL RECOMMENDATION

To protect the best interests of the Riverside Community College District and to ensure that the district contracts with the contractor who provides the highest return on its investment, the district should take the following actions:

Review and evaluate the legal opinion of the Legislative Counsel and assess the legal and financial risks of continuing with the current lease arrangement; and

consider the available options for placing the control and management of district real property directly with the trustees and for obtaining competitive bids as required by the Education Code for the development of district property.

DISTRICT RESPONSE

The District believes that review, evaluation and assessment of its development relationships are always appropriate. It has expressly provided for such review in the "Option to Lease" agreement between the District and the RCCD Development Corporation.

The conclusions and recommendations of the Auditor General regarding the RCCD Development Corporation are based on a faulty legal analysis and are inconsistent and contradictory.^③ The Legislative Counsel's opinion on which the conclusions are based is advisory only, does not carry force of law, and is contrary to a number of other legal opinions obtained by the District which support the validity of the Development Corporation. In sum, the report as to this subject represents nothing more than a difference of opinion which the Auditor General urges the District to "review", "evaluate" and "consider" available options (Report, p. 14).

Pursuant to Education Code Section 70902 and its predecessor, the District had the authority to proceed with respect to organization of the nonprofit corporation for purposes of supporting the District through gifts, transfer and receipt of assets, provided that its actions were not in conflict with, inconsistent with or preempted by any law, and that its action was not in conflict with the purposes for which community college districts are established.

AUDITOR GENERAL RECOMMENDATION

To ensure that it purchases the best services and products at the lowest price, the Riverside Community College District should obtain competitive bids for contracts of more than \$15,000 for work to be done and more than \$21,000 for the purchase of equipment and materials.

DISTRICT RESPONSE

Riverside Community College District does obtain competitive bids for contracts of more than \$15,000 for work to be done and more than \$21,000 for the purchase of equipment and materials.

The erroneous conclusion in the first instance cited was based on a misunderstanding of the specifics by the Auditor. ④ In the second instance, the District had understood that the IBM volume purchase agreement with the State of California was a legal substitute for the bid process. Subsequent computer equipment purchases were, and will be, competitively bid.

AUDITOR GENERAL RECOMMENDATION

To ensure that the district and the Riverside Community College Foundation comply with provisions of law applicable to auxiliary organizations, the district should adopt implementing regulations which would be applicable to the RCC Foundation as an auxiliary organization of the district. It should also ensure that the RCC Foundation reimburses the district for its use of district office space and employees.

DISTRICT RESPONSE

The RCC Foundation was legally incorporated in 1976 as a public benefit corporation as a trust under the State of California governed and regulated by the Attorney General, and will remain so until such time as the Foundation dissolve itself as a legal 501 (C) 3 corporation (See Appendix B). The Education Code was amended in 1980 to accommodate Foundations as auxiliaries; the Code is permissive. ⑤ The proposed Campbell legislation, AB1910, attempts to force community college foundations to become auxiliaries by further amending the current code section. The RCC Foundation is legal, successful and accountable to the RCC Board of Trustees and the Riverside community.

AUDITOR GENERAL RECOMMENDATION

To ensure that it follows all enrollment procedures and that students pay all required fees, the district should take the following actions:

Review its listings of students who owe enrollment and other fees, and ensure that the district places the necessary holds on the students' records and prevents the students from enrolling in subsequent semesters; and provide training for all staff to emphasize the district's procedures for determining and assigning residence status for students.

DISTRICT RESPONSE

The Auditor General has identified a need for the Office of Enrollment Services to implement additional internal control and related staff development activities in the areas of residency determination and fee collection.

The Director of Enrollment Services has implemented appropriate activities in these areas and believes the additional controls and training procedures developed should correct the concerns expressed in the audit.

AUDITOR GENERAL RECOMMENDATION

To safeguard its equipment, the district should take the following actions:

Upon purchase, promptly record in its listing of property the description, name, identification numbers, original cost, acquisition date, and location for all equipment and other property that cost at least \$200.

Mark all equipment with the district's name and an identification number; and

conduct a complete physical inventory of all equipment annually, and reconcile the physical inventory with the related accounting records.

DISTRICT RESPONSE

All items are recorded in the district's property listing with a description, name, identification number, original cost, acquisition date and location. These entries are made as staff time permits; the staffing costs associated with immediate entries would outweigh any added benefits.

There is no legal requirement to mark identification numbers on equipment, and the costs associated with marking the equipment would outweigh the benefits.

A physical inventory was conducted March, 1990, by Deans and Directors. Approximately 85% of the district's property listing was reviewed. While an annual (100%) physical inventory is desirable, the significant resources required to conduct such an inventory each year must be weighed against the possible benefits. We currently have 59,445 items, many with multiple components, on our asset inventory.

AUDITOR GENERAL RECOMMENDATION

To safeguard performing arts revenues and provide assurance that all amounts collected from ticket sales are deposited in the bank, the district should implement control procedures to account for all tickets printed, used, and

returned. In addition, these control procedures over revenues should provide for an effective reconciliation of all tickets sold with the money collected and deposited in the bank.

DISTRICT RESPONSE

Consideration is being given, within budget constraints, to purchasing additional hardware and software to provide improved reconciliation of theater tickets. It should be noted that neither the district auditor nor the Auditor General's staff have found any evidence of wrong doing in this matter.

II. DETAILED DISTRICT RESPONSE TO AUDIT RECOMMENDATIONS

AUDITOR GENERAL RECOMMENDATION

To protect the best interests of the Riverside Community College District and to ensure that the district contracts with the contractor who provides the highest return on its investment, the district should take the following actions:

- Review and evaluate the legal opinion of the Legislative Counsel and assess the legal and financial risks of continuing with the current lease arrangement; and
- Consider the available options for placing the control and management of district real property directly with the trustees and for obtaining competitive bids as required by the Education Code for the development of district property.

DISTRICT RESPONSE

The District believes that review, evaluation and assessment of its development relationships are always appropriate. It has expressly provided for such review in the Sections 4 and 24 of the Option to Lease between the District and the Development Corporation dated October 21, 1987 and the Option to Lease Agreement between the Development Corporation and IDM ratified by the District Board of Trustees dated August 15, 1989. The Option to Lease Agreement between the Development Corporation and IDM Development Corporation was expressly reviewed by legal counsel for the District and the District's Trustees. That review has been maintained through reports to the Trustees by administrators of the Development Corporation and the involvement of the Board Planning and Development Committee independent of the Auditor's report. The process will continue with consideration of the Auditor General's recommendations.

The District, however, disagrees with the conclusions and opinions of the Report on which the recommendations are based.

The conclusions of the Auditor General regarding the RCCD Development Corporation are based on a faulty legal analysis and are inconsistent and contradictory. The Legislative Counsel's opinion on which the conclusions are based is advisory only, does not carry force of law, and is contrary to a number of other legal opinions obtained by the District which support the validity of the Development Corporation.⁽³⁾In sum, the report as to this subject represents nothing more than a difference of opinion which the Auditor General urges the District to "review," "evaluate" and "consider" available options (Report, p. 14.)

Pursuant to Education Code Section 70902 and its predecessor, the District had the authority to proceed with respect to organization of the nonprofit corporation for purposes of supporting the District through gifts, transfer and receipt of assets, provided that its actions were not in conflict with, inconsistent with or preempted by any law, and that its action was not in conflict with the purposes for which community college districts are established. The District responses to the conclusions are:

AUDITOR GENERAL CONCLUSION

The Riverside Community College District leased its real property for development through an arrangement that is subject to legal challenges and may not protect the best interests of the District.

DISTRICT RESPONSE

The District leased the property following a competitive bid process recommended by the County Counsel and pursuant to Education Code Subsection 83160 et. seq. which governs such processes.

The District and Development Corporation defended a lawsuit attacking the lease, Bradshaw v. Riverside Community College District. Two writs of mandate halting the lease process were deemed by the court and the plaintiff withdrew his suit after a tentative ruling by the Riverside County Superior Court in favor of the District but before a final hearing by the court.

The sixty day statute of limitations on actions to validate the proceedings provided by Civil Code Sub-Section 860 & 863 has long since run out.

The District has received a number of legal opinions affirming its leasing process as the Report notes and as discussed below.

AUDITOR GENERAL CONCLUSION

Under the lease arrangement, the district has used a separate nonprofit corporation, the RCCD Development Corporation, to negotiate with private developers and to otherwise manage the district property.

DISTRICT RESPONSE

This conclusion as to property management is not supported by the facts or law. The relationship between the District and Development Corporation is that of lessor-lessee. The Education Code expressly authorizes the lease of the real property of a community college district. The Development Corporation is not the District's agent and there is no management contract in effect between the District and Development Corporation.

The assumption that the Development Corporation is a property manager and not a lessee is a critical factual error that biases the report's analysis of the bid process and the terms and conditions of the lease document. This error flaws all conclusions that follow it.

AUDITOR GENERAL CONCLUSION

In developing the lease arrangement, the district trustees relied upon the advice and opinions of legal counsel, who concluded, in general, that the trustees had the authority to create a nonprofit corporation and to lease district real property to the corporation.

DISTRICT RESPONSE

This is correct. The firm of Gibson, Dunn, and Crutcher formed the corporation as an independent 501 (c) (3) corporation. The Riverside County Counsel developed and approved the corporation bid package and drafted the lease document. The firm of Reid and Hellyer successfully defended the District in the lawsuit challenging the lease process. The firm of Rutan and Tucker wrote an opinion at the request of the Districts Trustees that the lease arrangement did not violate law. The firm of Thompson and Colegate reviewed the Option to Lease between the Development Corporation and IDM Development Corporation and approved it before Trustee ratification.

AUDITOR GENERAL CONCLUSION

However, we obtained from the Legislative Counsel a legal opinion that disagrees with the district's legal advice and questions the validity of the lease between the district and the RCCD Development Corporation.

DISTRICT RESPONSE

The Legislative Counsel's opinion is simply that - - an opinion. It does not have the force of law. The Legislative Counsel's powers are advisory only. Government Code Subsections 10230 - 10247, 42 Cal. Jur 3d, "Legislature" Subsection 18, pp. 572-574. While the opinion makes a policy judgment regarding the RCCD Development Corporation, it does so based on speculation expressed in presumptions, assumptions, and non sequiturs as detailed below. The opinion contradicts itself, and it is contradictory to other legal opinions previously obtained by the District. So, there is now a difference of opinion between lawyers, which is what the legal system is all about, but which does not amount to a violation of law.⑥

AUDITOR GENERAL CONCLUSION

Based upon the opinion of the Legislative Counsel, we conclude that the District Trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property and have increased the District's risk of loss from legal challenges.

DISTRICT RESPONSE

This conclusion hinges on an erroneous and inherently contradictory opinion that the Development Corporation is the alter ego of the District. The Report opines "to invoke the doctrine of alter ego, it must be shown that the corporation is a mere conduit for the transaction of private business and that no separate identity of the individual and corporation really exists" (Report p. 11). It is important to note that neither the Report, or the Legislative Counsel's Opinion on which it is based, makes the finding that the Development Corporation is in fact an alter ego of the District. The discussion is couched in speculation and equivocal terms such as "may be", "possibility," "could be alleged," etc. (Report, pp.

37-38.) Thus, any conclusions based on an alter ego relationship are merely opinions without evidence supporting them.

The fact that the District appoints corporate directors and the Superintendent serves as a director does not create an alter ego relationship. Otherwise, parent-subsidary corporate relationships would never be possible, when, in reality, they are a common fact of business life.

The Legislative Counsel's logic is completely circular. His opinion is that since the Corporation is exercising the power of the District, it is the alter ego of the District and it is exercising the powers of the District because it is the alter ego of the District. Again, it is important to note that the Report and Legislative Counsel's Opinion speculate but make no finding that these factors create an alter ego relationship.

The Report's conclusion that "the District Trustees have improperly delegated to the RCCD Development Corporation their responsibility to control and manage District real property" (Report pp. 13, 14) is inherently contradictory to the opinion regarding an alter ego relationship upon which the conclusion relies for support. If the Development Corporation is the District's alter ego, there is no effective difference between the two entities and, therefore, there could be no delegation between them. The act of the Corporation would be the act of the District. Either there is no difference or there is a difference between these corporations. The Report concedes that the RCCD Development Corporation is "a separate nonprofit corporation." (Report p. 13)

AUDITOR GENERAL CONCLUSION

Finally, as a result of the lease arrangement, the District and the RCCD Development Corporation may not have complied with all competitive bidding requirements.

DISTRICT RESPONSE

The conclusion of "improper delegation" and the speculation that correct bidding procedures were not followed (Report, p. 12) both assume without evidence that the Development Corporation was not a qualified bidder for the real property, again apparently based on the speculation regarding alter ego relationship of violation of law.^⑦ The Legislative Counsel itself only poses a question but found no evidence to conclude that a violation had occurred. The Legislative Counsel wrote,

"It may be alleged that the creation of the Corporation was intended to accomplish the lease of District real property without compliance with laws such as Article 6 applicable to the governing board. Whether these allegations, if true, amount to bad faith, fraud, or a grave injustice would be questions of fact. Such a purpose underlying the agreement between the board and the corporation might also constitute an unlawful object of a contract." (Report p. 38)

In fact, the Board had previously asked the law firm of Rutan & Tucker to examine this very question and the facts, and based on the factual evidence, the conclusion was reached that the Board of Trustees acted appropriately in compliance with law. Rutan & Tucker stated:

"The question therefore becomes one of whether the Corporation was formed or in fact operates in such a way as to circumvent a statutory obligation. In this situation, the statutory obligation imposed upon the District was that of disposing of surplus properties by way of competitive bid. The District did dispose of the property by way of competitive bid pursuant to Education Code Section 81360, et seq. The proposed lease of surplus property was noticed and advertised, a bid was submitted pursuant to that notice, and an award was made to the Corporation on the basis that it was the highest bidder. The use of a public competitive bid process is evidence that the District did not intend to avoid a statutory obligation and evidence that the District treated the Corporation as a separate entity by complying with the statutory procedure for the disposal of property." (Rutan & Tucker Opinion, June 13, 1989, p. 14)

The Legislative Counsel does not comment on the substance of the bid process, nor does he attack the terms and conditions of the lease between the District and the Development Corporation. He simply presumes that the Development Corporation was an improper lessee. This presumption does not accord with either the facts or the law.

The Legislative Counsel concluded that absent express statutory authority, the District is required to follow Education Code Subsection 81360 et. seq. in leasing the property, and that this section was not followed. This simply is wrong. The District, with the advice of the County Counsel, did lease the property to the Development Corporation pursuant to Education Code Subsection 81360 et. seq. as reviewed above.

The Legislative Counsel's speculation that, in the absence of express statutory authority, the lease to the Development Corporation violates the law ignores the permissive nature of the Community College Act. The Legislative Counsel reasons that if a District activity is not expressly authorized, it is prohibited. This is not the law.

The Legislature has granted broad authority to the governing board of a community college district to initiate and carry on any program, activity or to otherwise act in any manner not prevented by law. Section 70902(a) of the Government Code expressly states:

"(a) . . . In so doing, the governing board may initiate and carry on any program, activity, or may otherwise act in a manner that is not in conflict with or inconsistent with, or preempted by, any law, and that is not in conflict with the purposes for which community college districts are established.

.

(b) In furtherance of the provisions of subdivision (a), the governing board of each community college district shall do all of the following:

.

(6) Manage and control district property. The governing board may contract for the procurement of goods and services as authorized by law.

.

(10) In its discretion, receive and administer gifts, grants and scholarship.

(11) Provide auxiliary services as deemed necessary to achieve the purposes of the community college.

.

(13) Hold and convey property for the use and benefit of the district. The governing board may acquire by eminent domain any property necessary to carry out the powers or functions of the district.

(c) In carrying out the powers and duties specified in subdivision (b), or other provisions of the statute, the governing board of each community college district shall have full authority to adopt rules and regulations, not inconsistent with the regulations of the board of governors and the laws of this state, that are necessary and proper to executing these prescribed functions.

(d) Whenever in this section or any other statute a power is vested in the governing board, the governing board of a community college district, by majority vote, may adopt a rule delegating the power to the district's chief executive officer or any other employee or committee as the governing board may designate; provided, however, that the governing board shall not delegate any power that is expressly made nondelegatable by statute. Any rule delegating authority shall prescribe the limits of the delegation."

Section 70902 replaced Section 72233, which was an implementation of Article IX, Section 14 of the State Constitution. (See Education Code Section 35160.1 and discussion in Wexner v. Anderson Union High School District Board of Trustees, 89 Daily Journal D.A.R. 5497 (April 25, 1989.)

The Legislative Counsel, as attorney for the legislature, is protective of the authority of the legislature. The activity of the District in creating the Development Corporation seeks to stabilize the

funding of the District by development of its surplus resources in the absence of adequate financial support by the legislature. The District and its legal advisers have found nothing in the law that prohibits this kind

of positive initiative in the public interest. The Legislative Counsel, on the other hand, negatively concludes that if the legislature doesn't say so, it can't be done. This is a dispute of policy, not law.

AUDITOR GENERAL RECOMMENDATION

The Legislature should consider adding a provision to the Education Code that expressly prohibits a governing board of a community college from delegating to a separate corporation its power and responsibility to control and manage district real property.

DISTRICT RESPONSE

This recommendation clearly shows the wrongfulness of the conclusion of "improper delegation" of board authority. Even assuming for sake of argument that the Report's presumption of management delegation by the district is correct, which it is not, this recommendation can only be read as a tacit admission that the Auditor General and the Legislative Counsel found nothing in the law to prohibit this relationship. Otherwise, why the need to amend the Education Code to prohibit it.⑧

The facts are that the District Trustees are mandated by law to act in the best interests of the District and the public it serves. Consistent with that mandate, the Board of Trustees found no prohibition in the law against development of its surplus property by lease. It leased that property pursuant to the bid processes required by law. Following the advice of the County Counsel, the Trustees ratified the option to sublease between the Development Corporation, (the lessee) and IDM Corporation (the sublessee) reserving to the Trustees the right to approve any exercise of the option to lease or any modification of the option or subleases. The Trustees have properly exercised their authority to lease surplus property, but at no time have they relinquished their control over the ultimate disposition and use of district property. The Report and legislative counsel's on which it is based simply ignore the facts. It is expected that the Trustees, in following the Report's recommendation that they "review," "evaluate" and "assess" the leasing transaction will respect the facts and the law.

AUDITOR GENERAL RECOMMENDATION

To ensure that it purchases the best services and products at the lowest price, the Riverside Community College District should obtain competitive bids for contracts of more than \$15,000 for work to be done and more than \$21,000 for the purchase of equipment and materials.

DISTRICT RESPONSE

The report states that the district did not always follow the requirements for obtaining competitive bids. Riverside Community College District has a strict policy of complying with the Public Contract Code and Education Code for

obtaining competitive bids for services over \$15,000 and materials or equipment over \$21,000. It is and has always been of utmost concern to this district that we purchase the best services or products at the lowest price.

We take exception to the first instance cited and to the conclusion reached by the Office of the Auditor General regarding the installation of a replacement telephone system. The bid specifications and legal advertisement included wording that indicated to prospective bidders that there would be a conversion to a new telephone system as part of the bid. The installation of the replacement telephone system was included within the scope of the bid, the bid was conducted in accordance with the Public Contract Code, and the bid specifications clearly indicated that there were two components of the bid - maintenance and non-maintenance, both components affected by the conversion to a new system.④ It is our belief that the District would have violated the terms of the bid specifications to separately bid any non-maintenance work connected with the district's telephone system unless the maintenance contractor was performing unsatisfactorily. Copy of bid specifications, public legal advertisement, and board of trustees action are in Appendix C.

The second instance listed in the report concerns the purchase of computer equipment. It was our understanding that there was an IBM volume purchase agreement for the State of California and, therefore, the district could legally purchase from that volume purchase agreement without bidding. Also, it could be demonstrated that these purchases provided the district with the best products at the lowest price. As soon as the Office of the Auditor General informed us that this practice was not legal, subsequent computer equipment purchases which exceeded the bid limit were competitively bid.

AUDITOR GENERAL RECOMMENDATION

To ensure that the district and the Riverside Community College Foundation comply with provisions of law applicable to auxiliary organizations, the district should adopt implementing regulations which would be applicable to the RCC Foundation as an auxiliary organization of the district. It should also ensure that the RCC Foundation reimburses the district for its use of district office space and employees.

DISTRICT RESPONSE

Because the RCC Foundation follows similar policies and procedures as an auxiliary organization does not make it an auxiliary organization.⑤ The RCC Foundation has followed these policies and procedures since it was incorporated in 1976 because they are sound business practices that provide accountability. The RCC Foundation was legally incorporated as a public benefit corporation as a trust under the State of California governed and regulated by the Attorney General, and will remain so until such time the Foundation dissolves itself as a legal 501 (C) 3 corporation.

The RCC Foundation exists for the benefit of Riverside Community College, primarily for the purpose of raising funds for scholarships. Today the Foundation is in the final stages of completing a successful one million dollar endowed scholarship campaign.

The opinion that the Foundation will somehow be more honest and accountable as an auxiliary does not follow.⑨Records and audits to substantiate all activities and funds are available to the public.

The California Constitution prohibits the expenditure of public funds for a private purpose. Review of Article II of the Articles of Incorporation of the RCC Foundation will show the Foundation is organized on a nonprofit basis for the public benefit: that public benefit is the support of the RCC district. The funds are devoted to scholarships for students of the district.

AUDITOR GENERAL RECOMMENDATION

To ensure that it follows all enrollment procedures and that students pay all required fees, the district should take the following actions:

Review its listings of students who owe enrollment and other fees, and ensure that the district places the necessary holds on the students' records and prevents the students from enrolling in subsequent semesters; and provide training for all staff to emphasize the district's procedures for determining and assigning residence status for students.

DISTRICT RESPONSE

The findings of the auditor are accurate. However, the auditor did not "discover" this problem. The Director of Enrollment Services and the Vice President of Student Services became aware of the problem of fee collection for nonresident students and the procedures used for determining residency of students in the spring of 1990. The problem was brought to the attention of the District's auditors in April, 1990 (See Appendix A).

The Auditor General's staff note in their report that the procedures used for the determining residency of students, the collection of fees and the process for placing "holds" on students to prevent them from registering for future semesters until outstanding financial obligations were paid was inadequate. This finding was the exact opposite of the finding of the District's auditors (See Appendix A).⑩

When the problem was brought to the attention of the Director of Enrollment Services in the Summer of 1990, the Director implemented additional internal control procedures in an effort to correct the problems noted by the auditors. The auditors subsequently reviewed the corrective actions taken by the Director of Enrollment Services and noted that there continued to be a need for greater control.

Based on the recommendations provided by the auditors, the College has taken initiative to implement additional internal controls and staff development activities in an effort to correct the problem. Specific activities include:

1. Additional training sessions for employees involved in residency determination.
2. Semesterly review of all nonresident student records to validate payment of fees.

3. Review of computer printouts for "holds" to verify proper internal controls have been implemented.
4. Perform an annual internal review of residency coding procedures and how "holds" are placed on records and monitored.

It is the College's position that the activities identified above should resolve the problem identified by the audit.

AUDITOR GENERAL RECOMMENDATION

To safeguard its equipment, the district should take the following actions:

Upon purchase, promptly record in its listing of property the description, name, identification numbers, original cost, acquisition date, and location for all equipment and other property that cost at least \$200. Mark all equipment with the district's name and an identification number; and conduct a complete physical inventory of all equipment annually, and reconcile the physical inventory with the related accounting records.

DISTRICT RESPONSE

Of the five purchases of computer equipment tested by the district's independent auditors, totalling approximately \$109,000, all items were observed by the auditors at the location, as indicated in their working papers, and all items are now in the listing of property.

Of the six pieces of equipment selected for testing by the Auditor General's staff, totalling approximately \$85,800, three can be observed at the location noted on the property listing, the fourth item lists an equipment number which does not match the item description in the District's property listing (possibly a clerical error). The remaining two items, a typewriter purchased in 1976 and a printer purchased in 1979, with a combined original value of \$5,131, have not been located. The current value of these two items would be zero.

AUDITOR GENERAL RECOMMENDATION

To safeguard performing arts revenues and provide assurance that all amounts collected from ticket sales are deposited in the bank, the district should implement control procedures to account for all tickets printed, used, and returned. In addition, these control procedures over revenues should provide for an effective reconciliation of all tickets sold with the money collected and deposited in the bank.

DISTRICT RESPONSE

The report states that the District does not provide sufficient accountability for performing arts' tickets. Receipts tickets are deposited into a trust account within the student body checking account. In accordance with good accounting procedures, an attempt has been made to reconcile the performing arts' tickets with receipts, but it was found that the theater program was too extensive and complex, making the usual ticket reconciliation process

ineffective. Theater tickets are sold for specific seating at varying prices, some a year in advance. Others are sold the night of the show, sometimes at discount prices. Some are sold in groups as "season tickets." Costs vary from show to show, from day to night, for special performances, children shows, matinees, etc. Frequently, theater patrons request exchanges at the last minute, which can be accommodated but are difficult to record.

Since this was an area identified by the District and the District's auditors where improvements could be made to the internal control procedures involving the ticket reconciliation process, consideration is being given, within budgetary constraints, to the purchase of additional software and hardware to provide improved reconciliation of theater tickets in accordance with accepted audit standards. It should be pointed out that neither the district's auditors nor the Office of the Auditor General found any evidence of wrong doing or misappropriation of funds. There have been no reports of thefts or missing monies.

GARY T. CICHELLA, C.P.A.
DONALD A. DRIFTMIER, C.P.A.
GREGORY P. COOK, C.P.A.
DENNIS A. PRINGLE, C.P.A.
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April 11, 1990

John Andrews
Vice President for Student Services
Riverside Community College District
4800 Magnolia Avenue
Riverside, CA 92506

Dear John:

In response to your request for a review of the student fee collection process, our firm has examined current procedures and noted the following:

- A. A listing of both resident and non-resident students owing enrollment fees is being maintained and reviewed periodically. However, approximately one year ago this listing was being maintained for only resident students. Thus, non-resident students who had outstanding fee balances were allowed to enroll and attend classes contrary to school policy.
- B. A time lag in the collection process of student fees does exist for those students with guaranteed payments from either a foreign country or a branch of the military service. The college allows these students to enroll in and attend classes, providing they show proof of financial assistance (ie. a letter from their home country stating that the fees for the student will be paid by the country).

It appears that the student fee collection process consistent with school policy has been implemented. Students (resident and non-resident) are dropped from current classes and a hold is placed on the student's records if fees are not paid in full. Further, a hold on the student's records does not allow them to enroll in subsequent semesters. (Exceptions do occur, such as the international students or students in military service mentioned above).

It is our recommendation that the college should continue to monitor closely the status of all students with outstanding fees owed.

Yours very truly,



Dennis A. Pringle
of VAVRINEK, TRINE, DAY & CO.

DAP:kls

cc: Gordon Wooley ✓
Allen Pauw (Audit Committee)

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March 19, 1991

CONFIDENTIAL

Dr. Charles A. Kane
Superintendent/President
Riverside Community College
District
4800 Magnolia Avenue
Riverside, CA 92506-1299

RE: Opinion Letter in Response to January 31, 1991 Draft
Legislative Counsel's Opinion on Riverside Community College
District/Riverside Community College Foundation - #23060

Dear Dr. Kane:

This is in response to your request for my views concerning the analysis made and conclusions reached in the subject January 31, 1991 communication from David B. Judson, Deputy Legislative Counsel to Kurt R. Sjoberg, Acting Auditor General.

The January 31, 1991 draft opinion addresses one fundamental issue which is articulated by David Judson on page 4 as follows:

*** whether the Riverside Community College Foundation (hereafter foundation) would be considered to be an auxiliary organization of the Riverside Community College District (hereafter district) and, thus, would be required to comply with the provisions of Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of the Education Code (hereafter Article 6) and Chapter 4.5 (commencing with Section 59250) of Title 5 of the California Code of Regulations (hereafter Chapter 4.5) notwithstanding that the district chooses not to designate the foundation as an auxiliary organization.

In search of an answer to this question, he recites much of the content of the provisions of the current Article 6 (commencing with Section 72670 of Chapter 6 of Part 45 of Division 7 of the

Dr. Charles A. Kane
March 19, 1991
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Education Code (hereafter Article 6) and Chapter 4.5 (commencing with Section 59250) of Title 5 of the California Code of Regulations (hereafter Chapter 4.5). He then observes at page 8:

*** that a foundation in support of a community college district may be established pursuant to Article 6 and Chapter 4.5. .pl66

Of course, no one would disagree; but from there he moves:

*** to the question of whether a foundation which falls within the definition of an auxiliary organization under the statute is an auxiliary organization and must abide by the provisions of Article 6 and Chapter 4.5 if the district's governing board chooses not to designate the foundation as an auxiliary organization.

On page 17, after 9 more pages of analysis, David Judson reaches this conclusion:

*** we are of the opinion that the Foundation is an auxiliary organization of the district *** and therefore is required to comply with the provisions of Article 6 and Chapter 4.5 notwithstanding that the district chooses not to designate the foundation as an auxiliary organization.

It is unfortunate that Mr. Judson did not understand the intent of this legislation with regard to community college district-related nonprofit corporations that were in existence prior to the effective date of the 1980 Legislation.

The 1980 bill (Assembly Bill No. 2627) was drafted by the then General Counsel of the Los Angeles Community College District. It was introduced in the 1980 legislative session by Assembly Member Gwen Moore at the request of the Los Angeles Community College District (Ms. Moore had just concluded her service on the Los Angeles Community College Board of Trustees to become a member of the California State Assembly). The bill was passed by both the Assembly and Senate with not one negative vote and with no amendments. The bill had an urgency clause and thus became effective when it was signed into law by the Governor on August 30, 1980.

Now let me comment on a couple of the provisions in Assembly Bill No. 2627 (Statutes of 1980, Chapter 858). It begins with Section 72670:

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As used in this article, "auxiliary organization" includes but is not limited to, the following entities:

Then a number of organizational and operational relationships are described which Mr. Judson has included on pages 5 and 6 of his opinion.

Then there is Section 72682, which was included in response to the strong recommendations of several in-house community college district in-house attorneys:

An auxiliary organization which was in existence on the effective date of this section shall continue to operate under the provisions of Article 6 (commencing with Section 72670) of Chapter 6 of Part 45, as it read immediately prior to January 1, 1980, until such time as the organization is approved pursuant to this article.

During the fall of 1980 and continuing into the winter of 1981, Tom Nussbaum, the General Counsel of the California Community College system, working with a group of community college attorneys and others, prepared a draft set of Regulations for consideration by the Board of Governors at its March 19-20, 1981 meeting. He also prepared a commentary that he distributed, with those draft Regulations, to the Board for their consideration at that meeting. In his commentary he addressed what he characterized as "major issues".

The first major issue involves the scope of the new legislation; specifically, if a previously established entity falls within the definition of "auxiliary organization" (Education Code Section 72670) must that entity now comply with the new law and the regulations of the Board of Governors? *** A literal reading of the legislation has led some observers to the conclusion that if an entity falls within the definition of an "auxiliary organization" it must comply with the new law and regulations. Staff believes this conclusion was not intended by the Legislature. Rather, the intent of the legislation is to provide districts with an optional framework or mechanism for carrying out activities which provide supportive services and specialized programs for the general benefit of the college. If a district does not wish to convert an existing entity to an auxiliary organization, it may continue to operate pursuant to the laws and regulations which govern its establishment

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and operation. On the other hand, unless it is converted to an auxiliary organization it will not enjoy any of the additional flexibility and authority that may come with this mode of operation. ***

Tom Nussbaum concluded:

The last major issue involves the status of auxiliary organizations which were created under the former law. Should they be required to convert to the new mode? Staff believes not. If a district wishes to operate its auxiliary organization under the former law, and does not wish to take advantage of any benefits or flexibility which might occur under the new mode, then a district should be able to make this decision. If, however, a district wishes to avail itself of this new mode of operation, it must comply with the new law and the regulations of the Board of Governors.

In developing the draft Regulations for the consideration of the Board of Governors, Tom Nussbaum included provisions that were consistent with his view of the Legislative intent of Assembly Bill No. 2627. One of those sections is 59250 which reads:

(a) The governing body of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges, as determined by the governing board. Such organizations shall be established and maintained in accordance with the provisions of Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code, and the regulations contained in this chapter.

(b) Other organizations which provide supportive services and specialized programs for the general benefit of colleges, which are authorized by other provisions of law need not be established as an auxiliary organization pursuant to this chapter. If, however, an organization is not established as an auxiliary organization in accordance with the provisions of this chapter, its powers and duties will continue to be defined by the other provisions of law which provide for its establishment and operation.

(c) An auxiliary organization which was in existence on or before August 31, 1980, may continue to operate under the provisions of Article 6 (commencing with

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 March 19, 1991
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Section 72670) of Chapter 6, Part 45 of the Education Code, as it read on August 30, 1980. Such organizations, however, shall operate only in accordance with the provisions of former Article 6; and shall not, unless established and maintained in accordance with the provisions of this chapter, be vested with any additional authority or flexibility that may be provided by this chapter and the current Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code.

Tom Nussbaum made this comment about Section 59250:

This section is necessary to clarify some ambiguities regarding the scope of the new legislation (AB 2627, Chapter 858, Statutes of 1980).

There were several community college districts, however, that were not satisfied that his interpretation of the law would survive a legal challenge, even when he got the Board of Governors to adopt Regulations that were consistent with that interpretation. In 1981 they sought and obtained further legislative clarification of the issue through the enactment of several provisions that were included in the Statutes of 1981, Chapter 470. The following introductory sentence was added to Section 72670:

The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges.

Note that this permissive language was borrowed from Section 59250(a).

Then the original opening sentence of 72670 was changed from:

As used in this article, "auxiliary organization" includes, but is not limited to, the following entities:

to:

As used in this article, "auxiliary organization" may include, but is not limited to, the following entities:

Finally, Section 72682 was changed to include specific dates (following the style of Regulation Section 59250(c); but, more importantly, the final clause was changed from:

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 March 19, 1991
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*** until such time as the organization is approved pursuant to this article.

to:

*** until such time, if any, as the organization is approved pursuant to this article.

If the Legislative intent was not clear in the 1980 statutory enactment, that a community college district-related nonprofit corporation that was in existence on August 31, 1980 could continue to operate under the prior law, the changes made to the law in 1981 certainly made it clear. There is no mandate in the 1980 law that existing organizations would be subject to that law even if they met any of the descriptive phrases found in Education Code Section 72670.

The second and final basis on which Mr. Judson asserts that the Foundation is an auxiliary organization subject to the 1980 law is his conclusion that otherwise it would not be subject to the Ralph M. Brown Open Meeting Law. Here is how he analyzes the issue on page 12 of his opinion:

Moreover, Section 72674, relating to boards of directors of auxiliary organizations, requires each board to conduct its business in public meetings according to the provisions of the Ralph M. Brown Act. (Ch. 9, commencing with Sec. 54950, Div. 2, Title 5, Gov. C.) This provision alone is a significant indication that the Legislature, by enacting Chapter 858 of the Statutes of 1980, intended organizations which meet the definitions set forth in Section 72670 and which provide auxiliary services to a community college or district to be governed by the provisions of Article 6. ***

Then he continued:

To uphold a community college district's determination that an organization which provides auxiliary services and meets the definition of an auxiliary organization under Section 72670 is not an auxiliary organization and thus avoids the requirements of Article 6, would circumvent the intent of the Legislature in this regard to make an organization which serves a public institution subject to the open meeting requirements of the Ralph M. Brown Act.

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 March 19, 1991
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It is clear that a community college district-related nonprofit corporation is subject to the Ralph M. Brown Act if the provisions of that law are applicable to it and not if it is an auxiliary organization pursuant to the 1980 law. For example, the Ralph M. Brown Act applies to all so-called "legislative bodies." A legislative body is defined in Section 54952 to mean:

*** the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.

It is thus clear that a community college-related entity that neither provides any auxiliary services nor meets the definition of an auxiliary organization under Section 72670 of the 1980 law, would be required to conduct open meetings if it meets the conditions set forth in Government Code Section 54952.

The point of all this is that whether the Foundation is a 1980 law auxiliary organization and whether it is subject to the Ralph M. Brown Act are two separate and unrelated issues. Mr. Judson's conclusion that the Foundation is an auxiliary organization because it is subject to the Ralph M. Brown Act is thus seriously flawed.

I believe that I have clearly established that the Foundation is not an auxiliary organization and, therefore, is not required to comply with the provisions of Article 6 and Chapter 4.5. This leads to the inescapable conclusion that it is subject to the pre-1980 law relating to community college district-related entities. If this is the case, using the words of Mr. Judson from page 12 of the opinion:

Under the pre-1980 law *** there was no requirement that an auxiliary organization reimburse a district for district facilities used in the performance of its function and for services performed by district employees under the direction of the auxiliary organization, ***

The conclusion is inescapable that, as David Judson failed to demonstrate that the Foundation was an auxiliary organization

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under the 1980 law, he also failed to demonstrate that the Foundation was subject to the California Code of Regulations, Title 5, Section 59257(j)(6) requirement that there is:

Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization.

If I may contribute anything further to the consideration of this matter, please let me know.

Very truly yours,



John W. Francis
Attorney at Law

JWF:ao

CHANCELLOR'S OFFICE

05/103

CALIFORNIA COMMUNITY COLLEGES

1238 S STREET
SACRAMENTO, CALIFORNIA 95814
(916) 445-8752



February 9, 1981

TO: SUPERINTENDENTS AND PRESIDENTS,
BUSINESS OFFICERS AND INTERESTED PARTIES

FROM: *Thomas J. Nussbaum*
Thomas J. Nussbaum, General Counsel

SUBJECT: Auxiliary Organization Regulations:
Preliminary Draft

Attached you'll find a preliminary draft of regulations to implement AB 2627 (Chapter 858, Statutes of 1980) regarding auxiliary organizations.

We invite your review and comments on these proposed regulations, which will be considered in committee by the Board of Governors on February 27th, and by the full Board of Governors on March 19, 1981. Comments will be accepted at any time prior to Board action, although we'd prefer having them prior to the February 27th committee meeting.

Our approach in developing the regulations has been to define and emphasize the district's role in the establishment and maintenance of auxiliary organizations, and to avoid unnecessary intervention by the Chancellor's Office and Board of Governors. Our aim is to develop a regulatory scheme which will insure quality control and compliance monitoring by the district, rather than by the State.

Highlights of the proposed regulations are as follows:

1. Previously established auxiliary organizations, student body organizations, etc. need not become an auxiliary organization pursuant to the new law and these regulations (See Section 59250).
2. Districts will establish auxiliary organizations. While implementing regulations must be approved by the Chancellor's Office, the particular auxiliary organizations need not (See Sections 59255, 59257).
3. The functions for which auxiliary organizations may be established are listed in Section 59259.

Comments, which appear in italics, have been added to explain the text of each proposed regulation. They aren't a part of the regulations, but provide important background information, and we urge that you read them.

PRELIMINARY DRAFT: 2-6-81

- (1) Chapter 5 (commencing with Section 59250) is added to Division 10, Part VI of Title 5 to read:

CHAPTER 5. AUXILIARY ORGANIZATIONS

Article 1. Scope and Definitions

59250. Scope. (a) The governing board of a community college district may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of its college or colleges, as determined by the governing board. Such organizations shall be established and maintained in accordance with the provisions of Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code, and the regulations contained in this chapter.

(b) Other organizations which provide supportive services and specialized programs for the general benefit of colleges, which are authorized by other provisions of law, need not be established as an auxiliary organization. If, however, an organization is not established as an auxiliary organization in accordance with the provisions of this chapter, its powers and duties will continue to be defined by the other provisions of law which provided for its establishment and operation.

(c) An auxiliary organization which was in existence on or before August 31, 1980, may continue to operate under the provisions of Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code, as it read on August 30, 1980. Such organizations, however, shall operate only in accordance with the provisions of former Article 6; and shall not, unless established and maintained in accordance with the provisions of this chapter, be vested with any additional authority or flexibility that may be provided by this chapter and the current Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code.

NOTE: Authority cited: Sections 71020, 72672, Education Code.
Reference: Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code; especially Sections 72670 and 72682.

Comment: This section is necessary to clarify some ambiguities regarding the scope of the new legislation (AB 2627, Chapter 858, Statutes of 1980. That legislation begins (Education Code Section 72670) with a definition of the term, "auxiliary organization." One possible implication of this definition is that if an existing organization (such as a student organization operating pursuant to Education Code 76060 et. seq.) falls within the definition of "auxiliary organization," it must be established as an auxiliary organization in accordance with the new provisions of law and whatever regulations are adopted by the Board of Governors.

This implication is incorrect. Rather, the intent of the legislation is to provide districts with an optional framework or mechanism for carrying out activities which provide supportive services and specialized programs for the general benefit of its college or colleges. If a district decides that such services and programs can be best provided through an auxiliary organization, then the district may choose to create an auxiliary organization pursuant to the new law and regulations. A district will not be required to establish an auxiliary organization simply because the support service being provided falls within the definition of "auxiliary organization." If, however, a district wishes to provide an organization with the additional flexibility and authority that an auxiliary organization will enjoy, that organization must be established and operated as auxiliary organization in accordance with the new law and regulations. Otherwise the organization will continue to have only those powers and duties that are provided by the laws which authorize it.

The former law on auxiliary organizations stated that, "Nothing in this article shall be construed as granting any auxiliary organization any power which exceeds any power of a governing board of a community college district." (Section 72670)

The new law does not contain this restriction, and in fact is intended to give auxiliary organizations additional authority and flexibility.

Section 72682 of the Education Code, as added by the new legislation, authorizes auxiliary organizations which were created under the former law to remain in existence. These organizations, however, will not enjoy the additional authority and flexibility that is provided by the new legislation; the auxiliary organizations will only possess the authority provided by the former law, and will be prohibited from exercising any power which exceeds any power of a community college governing board.

59251. Definitions. For the purposes of this chapter, the following definitions shall be applied:

(a) Auxiliary Organization: An "auxiliary organization" is an entity authorized by Section 72670 of the Education Code which is established by the governing board in accordance with the provisions of this chapter and Article 6 (commencing with Section 72670 of Chapter 6, Part 45 of the Education Code.

(b) Written agreement: A "written agreement" is an agreement between a community college district and an auxiliary organization which addresses, at a minimum, the contents specified in Section 59261 of this chapter.

NOTE: Authority cited: Sections 71020, 72672, Education Code.

Reference: Section 72670, 72672, Education Code.

Comment: This section defines critical terms which are contained in the chapter.

Article 2. District Responsibilities

59255. Conditions for Establishment. The following conditions must be met before an auxiliary organization may be established by a community college district:

- (a) The district governing board must adopt implementing regulations for auxiliary organizations. Such regulations must, at least, address the subjects specified in Section 59257 of this chapter;
- (b) The district's implementing regulations must be reviewed and approved by the Chancellor;
- (c) The particular auxiliary organization being established may only provide recognized services or functions as specified in Section 59259;
- (d) The district governing board must approve the establishment of the auxiliary organization, which approval shall include a written agreement with the auxiliary organization; and
- (e) The district must at such time as it recognizes an auxiliary organization, submit to the Chancellor the written agreement as well as the articles of incorporation, bylaws, or other governing instrument of the particular auxiliary organization.

NOTE: Authority cited: Sections 71020, 72672 Education Code.
Reference: Section 72672, Education Code.

Comment: This section sets forth the conditions which must be met prior to the establishment of an auxiliary organization. Subdivision (c) of Section 72672 of the Education Code provides in part:

(c) The purposes and operations of an auxiliary organization shall be conducted in conformity with general regulations established by the board of governors and with implementing regulations which shall be established by each district governing board prior to the establishment of an auxiliary organization. The implementing regulations established by a district shall be submitted to, and approved by, the chancellor's office prior to the recognition of an auxiliary organization by that district. At such time as a district may recognize an auxiliary organization, it shall submit a copy of the articles of incorporation, bylaws, or other governing instruments of the auxiliary organization to the chancellor's office.

The Board's authority to regulate the minimum contents of the district implementing regulations is contained in its authority to adopt general regulations on the purposes and operations of auxiliary organizations. The authority to regulate regarding the services or functions of auxiliary organization is also based upon this authority as is the requirement that the written agreement be entered into and submitted to the Chancellor.

59257. Implementing Regulations. Each district governing board wishing to establish an auxiliary organization must adopt implementing regulations, and submit such regulations to the Chancellor for approval. The implementing regulations must contain provisions which address at least the following subjects:

- (a) Provisions which set forth the district's method for recognizing an auxiliary organization, which procedure must include a public hearing prior to such recognition;
- (b) Provisions which limit authorized auxiliary organizations to those performing functions recognized in Section 59259;
- (c) Provisions which implement Section 72674 of the Education Code, regarding composition and meetings of boards of directors of auxiliary organizations;

(d) Provisions which implement subdivision (a) of Section 72672 of the Education Code, regarding the audit of auxiliary organizations;

(e) Provisions which implement subdivision (c) of Section 72672 of the Education Code, regarding salaries, working conditions, and benefits for full-time employees of auxiliary organizations;

(f) Provisions which implement Section 72675 of the Education Code, regarding expenditures and fund appropriations by auxiliary organizations;

(g) Provisions which establish recordkeeping responsibilities of auxiliary organizations;

(h) Provisions which establish a procedure for periodic review of each auxiliary organization by the district to insure that it is complying with Sections 72670-72682 of the Education Code, district implementing regulations, its written agreement with the district, and its articles of incorporation or bylaws; and

(i) Provisions which prohibit the district from transferring any of its funds or resources other than funds or resources derived from gifts or bequests, to any of its auxiliary organizations, when the purpose of such transfer is either to avoid laws or regulations which ordinarily constrain community college districts or to provide the district with an unfair advantage with respect to the application of any state funding mechanism.

NOTE: Authority cited: Sections 71020, 72672, Education Code.

Reference: Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code, especially Sections 72672, 72674, and 72675.

Comment: The authority of the Board of Governors to regulate the minimum content of district implementing regulations is based on the authority to adopt general regulations on the purposes and operations of auxiliary organizations. The various subdivisions of Section 59257 are justified as follows:

Subdivision (a): The rules and procedures for establishing an auxiliary organization should in the form of adopted district policy, available to all concerned parties. At least one public hearing should be held prior to the recognition of any auxiliary organization.

Subdivision (b): If a function is not authorized, an auxiliary organization cannot be formed to provide it.

Subdivision (c), (d), (e), and (f): These provisions reference critical portions of the new legislation which need district implementation.

Subdivision (g): Recordkeeping duties of auxiliary organizations should be prescribed by districts.

Subdivision (h): It is the responsibility of the district (as opposed to the State) to insure that auxiliary organizations are operating in accordance with the Education Code, district implementing regulations, written agreements, and articles of incorporation.

Subdivision (i): This provision is necessary to prevent certain potential abuses of the auxiliary organization concept. For instance, a district should not be permitted to transfer a sum of money to an auxiliary organization so that it can construct a building without going to bid, and then donate the finished building back to the district.

59259. Recognized Functions. The functions to be undertaken by auxiliary organizations are for the purpose of providing essential activities which are an integral part of the community college educational programs. The following functions have been determined by the Board of Governors to be appropriate for auxiliary organizations to operate, administer and manage:

- (a) Student association or organization activities;
- (b) Bookstores;
- (c) Food and campus services;
- (d) Student union facilities and programs;
- (e) Housing facilities;
- (f) Loans, scholarships, grants-in-aids;
- (g) Workshops, conferences, institutes, and federal projects;
- (h) Instructionally-related programs;
- (i) Alumni activities;
- (j) Supplementary health services;
- (k) Gifts, bequests, devises, endowments and trusts; and
- (m) Public relations programs.

NOTE: Authority cited: Sections 71020, 72672, Education Code.
Reference: Section 72672, Education Code

Comment: This listing of recognized functions is drawn from Section 42500 of Title 5, which relates to the recognized functions for auxiliary organizations in the California State University and Colleges system.

59261. Written Agreement. (a) A written agreement between a district and an auxiliary organization is required for the performance by an auxiliary organization of a function for the district. If an auxiliary organization performs more than one function, then the written agreement may cover any number of those functions, or a separate agreement may cover each function.

(b) The written agreement shall specify, among other things, the following:

- (1) The function or functions which the auxiliary organization is to manage, operate or administer;
- (2) A statement of the reasons for administration of the functions by the auxiliary organization instead of by the college under usual district procedures;
- (3) The areas of authority and responsibility of the auxiliary organization and the college;
- (4) The facilities to be made available, if any, by the district to permit the auxiliary organization to perform the functions specified in the written agreement;
- (5) The charge or rental to be paid to the district by the auxiliary organization for any district facilities used in connection with the performance of its function. The charge or rental specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the auxiliary organization may determine to what extent it shall be liable therefor;

(6) Full reimbursement to the district for services performed by district employees under the direction of the auxiliary organization. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable;

(7) A simple and equitable method of determining in advance to what extent the auxiliary organization shall be liable for indirect costs relating to federally-sponsored programs;

(8) The responsibility for maintenance and payment of operating expenses;

(9) The proposed expenditures for public relations or other purposes which would serve to augment district appropriations for operation of the college. With respect to expenditures for public relations or other purposes which would serve to augment district appropriation for operation of the college, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the governing board of the auxiliary organization. The college president shall file with the district's chief executive officer a statement of auxiliary organizations' policies on accumulation and use of public relations funds. The statement will include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control;

(10) The disposition to be made of net earnings derived from the operation of facilities owned or leased by the auxiliary organization and provisions for reserves;

(11) The disposition to be made of net assets on cessation of the operations under the agreement; and

(12) A covenant of the auxiliary organization to maintain its existence throughout the period of the agreement and to operate in accordance with Sections 72670-72682 of the Education Code, and with the regulations contained in this chapter as well as district implementing regulations.

NOTE: Authority cited: Sections 71020, 72672, Education Code.

Reference: Section 72672, Education Code, and Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code.

Comment: The concept of a written agreement is drawn from the California State University and Colleges model (Title 5, Sections 42501-42502). While articles of incorporation and bylaws tend to be somewhat boilerplate and all-inclusive, the written agreement will provide a clear, succinct statement about the scope and operations of an auxiliary organization. It will serve as a readily understood contract between the district and the auxiliary organization. While the articles of incorporation and bylaws stand as a contract between the State and the auxiliary organization, the written agreement stands as a contract between the auxiliary organization and the district.

59263. Auxiliary Organizations in Good Standing. (a) Each district which establishes one or more auxiliary organizations shall prepare and keep current a list of auxiliary organizations in good standing. All auxiliary organizations which, after periodic review in the manner specified by district implementing regulations, are found to be in compliance with applicable laws and regulations, shall be included on this list.

(b) When the chief executive officer of a district has reason to believe that a particular organization should be removed from this list, he or she shall give the board of directors of such organization reasonable notice that a conference will be held to determine whether grounds for removal do in fact exist, and representatives of said board shall be entitled to present at such conference and to be heard. Based upon such conference, the chief executive officer shall recommend to the district governing board whether a particular organization should be removed from the list. The district governing board may remove such an auxiliary organization from said list, and may make such other provisions consistent with law as may be appropriate with respect to an auxiliary organization not included on said list.

NOTE: Authority cited: Sections 71020, 72672 Education Code.

Reference: Section 72672, Education Code.

Comment: The concept of a list of auxiliary organizations in good standing is adopted from the California State University and Colleges model (Section 42406 of Title 5).

59265. Ongoing Responsibilities. Each district governing board which establishes one or more auxiliary organizations shall:

(a) Insure that an audit on each auxiliary organization is performed annually in the manner prescribed by subdivision (a) of Section 72672 of the Education Code; and that a copy of said audit is submitted to the Chancellor;

(b) Submit any changes in district implementing regulations to the Chancellor for approval;

(c) Submit to the Chancellor any changes made in any written agreement, articles of incorporation, bylaws or other governing instrument pertaining to any established auxiliary organization;

(d) Periodically review each auxiliary organization for compliance with Education Code Sections 72670-72682, the regulations contained in this chapter and district implementing regulations, the written agreement, and the auxiliary organization's articles of incorporation, bylaws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;

(e) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in Section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and

(f) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

NOTE: Authority cited: Sections 71020, 72672, Education Code.

Reference: Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code.

Comment: The Chancellor's Office will maintain these records for interested parties, and for preparing the required report to the Legislature.

59276. Annual Report to Legislature. The Chancellor shall submit an annual report to the Legislature which shall describe the development and activities of the auxiliary organizations authorized by Article 6 (commencing with Section 72670) of Chapter 6, Part 45 of the Education Code. The report shall also account for the cost to the Chancellor's Office of administering the provisions of this article.

NOTE: Authority cited: Sections 71020, 72672, Education Code.
Reference: Section 72681, Education Code.

Be it further resolved that these regulations mandate no new cost to local state, or federal agencies, within the meaning of Section 2231 of the Revenue and Taxation Code.

RIVERSIDE COMMUNITY COLLEGE DISTRICT

serving the school districts of ALVORD • CORONA-NORCO • JURUPA • MORENO VALLEY • RIVERSIDE • VAL VERDE

4800 MAGNOLIA AVENUE / RIVERSIDE, CALIFORNIA 92506-1299 / (714) 684-3240



June 19, 1989

INVITATION TO BID**FULL SERVICE MAINTENANCE - TELEPHONE EQUIPMENT**

The Riverside Community College District is inviting bids for the full service maintenance of its GTX400 Telephone System and all related lines and installations. This system, or portions of it, will be utilized through October 1, 1989 when a conversion will be made to a ROLM 8000 system. Vendors must have trained personnel on both systems.

The period of this maintenance agreement will be for three (3) years, beginning August 1, 1989, and ending July 31, 1992, unless terminated earlier in accordance with stated provisions.

Sealed bids will be accepted until **10:00 A.M., July 11, 1989**. Bids are to be sent to Mr. Gordon R. Woolley, Jr., Assistant Superintendent/Business Manager, Riverside Community College District, 4800 Magnolia Avenue, Riverside, CA 92506-1299.

The Board of Trustees reserves the right to reject any or all bids.

SPECIFICATIONS FOR FULL SERVICE MAINTENANCE - TELEPHONE EQUIPMENT

SYSTEM: The current District-owned telephone system consists of the GTX400 with 4 hour DC battery backup, forty-seven (47) trunk lines, 400 extension lines and two operator consoles. Some modifications to the GTX400 which have been made include: (1) incoming trunks modified for call gating; (2) outgoing trunks modified for busy lamp status; (3) system modified for 47 trunk operation (vs. normal 32); (4) front operator console modified for rectifier fail alarm; (5) back console modified for high traffic alarm; (6) both consoles modified for touch call service; (7) system modified for touch call service; (8) independent local area telephone systems (e.g. Walker) have been installed.

In addition to the GTX400 equipment, there is in service three (3) Toll Restriction units. A total of 567 phones are in use in the District at the present time. The individual breakdown is as follows:

306 each AE SL Rotary	15 each SC 6B Touchcall
21 each AE SL Touchcall	4 each SC 10B Touchcall
50 each AE 6B Rotary	14 each ITT SL Touchcall
27 each AE 6B Touchcall	1 each SC 6B Rotary
17 each AE 10B Touchcall	14 each ITT 6B Touchcall
10 each AE 10B Rotary	20 1A2 Key Systems
1 each AE 20B Rotary	3 Electronic Keystar phones
1 Phonemaster Toll Restrictor	10 Single Line Toll Restrictors
1 Electronic Keystar System	2 Electronic Walker Key Systems
1 AE S.A.C. units	23 Electronic Poets 6 line
20 Electronic Marathon 6 line	5 Electronic Marathon 17 line
3 Electronic Marathon systems	

SYSTEM CONVERSION: The District is intending to install a ROLM 8000 telephone switch using both analog and digital. The system will be designed for 600 extensions and 60 trunk lines. The full configuration is not complete at this time.

ADDITIONS: The maintenance agreement will include the existing system and the system when converted to ROLM 8000, as well as any instruments added during the period of the agreement.

SERVICES: In addition to the above-listed equipment, the following will also become a part of the maintenance agreement:

1. Maintenance of the interbuilding coaxial cable distribution system.
2. Maintenance of the energy management system connected to the telephone lines.
3. Maintenance of the various alarm circuits connected to the telephone lines.
4. Maintenance of the pay telephones connected to the telephone lines.

PERFORMANCE CRITERIA: The criteria to be met in the performance of this full service maintenance agreement are as follows:

Preventive Maintenance: Regularly scheduled preventive maintenance inspections and routine functional tests are to be performed in accordance with existing telephone industry practices.

On-Call Corrective Maintenance: Correction of equipment, and/or software if applicable, malfunctions will be made by trained technicians, and will include all material and labor. This service will be provided six (6) days a

week during the normal operating hours of the District. The normal operating hours of the District are: 7:00 AM to 7:30 PM, Monday through Thursday; and 8:00 AM to 4:30 PM, Friday & Saturday. Response time will not exceed four (4) hours from time of notification during normal working hours. The District will advise the vendor of any communication system malfunction as soon as possible.

Bids for this maintenance service will not be accepted by the District unless the bidder has a minimum of two (2) technicians trained in the maintenance of the GTX400 system and ROLM 8000.

NON-MAINTENANCE CHARGES: A quote will be submitted by the Contractor itemizing labor and parts for each specific required job. The District reserves the right to purchase non-maintenance parts and equipment or negotiate with the Contractor for the purchase of those items. The District reserves the right to determine which equipment is to be repaired and which equipment is to be replaced and whether the purchase of parts and/or equipment will be made by the District or the Contractor to be billed to the District. The District will issue a purchase order for any work to be performed or installations of equipment to be made for items other than those covered under the full-service maintenance agreement. The vendor will charge the District for these services at the hourly rate as quoted on the bid document. All labor and parts, as agreed to by the District, for these additional services will be billed by the Contractor and the District will pay such charges on a monthly frequency. Any major rebuilding or specification changes are not expected to be covered by this maintenance agreement.

CANCELLATION NOTICE: In the event the vendor does not perform service in a satisfactory manner to the District, the District reserves the right to cancel the agreement with a thirty (30) day written notice. This requirement is made in lieu of having the vendor post a 50% performance bond.

OFFICE SPACE: The District will provide office space on campus for the successful bidder.

PAYMENT SCHEDULE: Payments will be made quarterly in advance upon receipt of approved invoice.

GENERAL CONDITIONS: The Board of Trustees reserves the right to reject any or all bids. See attached general bid instructions and conditions.

Riverside Community College District

General Bid Instructions and Conditions

1. ERRORS AND CORRECTIONS: All prices and notations must be typed. No erasures will be permitted. Bids should be verified prior to submission as bids cannot be withdrawn or corrected after being opened.
2. SUBSTITUTIONS: Except as noted, substitutions will not be permitted.
3. ACCEPTANCE OF BID: Bid is subject to acceptance at any time within sixty (60) days after the bid opening. Successful bidder will be issued a purchase order which will signify that the bid has been awarded and that the vendor may proceed with the service.
4. PATENTS, ETC: The vendor shall hold the Riverside Community College District, its officers, agents and employees, harmless from liability of any nature or kind on account of use of any copyrighted or noncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in this bid.
5. FAILURE TO BID: Bidders name may be removed from unsolicited mailing list when failure to bid is unexplained.
6. AFFIRMATIVE ACTION PROGRAM: In signing the bid document (or facsimile) the vendor is certifying that vendor does not discriminate against any employee or applicant for employment because of race, color, sex, age, handicap, religion or national origin. The vendor is also certifying that vendor is actively seeking to achieve equal opportunity in all aspects of vendor's business.
7. RESPONSIBILITY: All bids must be signed with the name of the vendor and an authorized representative of the vendor. Obligations assumed by such signature must be fulfilled. When bids amount to \$1,000 or more, the District may require the vendor to submit a certified check, cashier's check or bid bond made payable to the Riverside Community College District, for not less than 10% of the bid total, which shall be forfeit if the bidder fails to comply with the terms of the signed bid after acceptance by the Board of Trustees.

TO RIVERSIDE COMMUNITY COLLEGE DISTRICT
4800 MAGNOLIA AVENUE
RIVERSIDE, CA 92506-1299

BID PROPOSAL

TELEPHONE MAINTENANCE PRICE SCHEDULE

COMMUNICATION SYSTEM: GTX 400 AND ROLM 8000

FULL SERVICE MAINTENANCE AGREEMENT in accordance with bid specifications dated June 19, 1989.

PRICE PER YEAR \$ _____ August 1, 1989, through July 31, 1990

PRICE PER YEAR \$ _____ August 1, 1990, through July 31, 1991

PRICE PER YEAR \$ _____ August 1, 1991, through July 31, 1992

NON-MAINTENANCE HOURLY RATE in accordance with bid specifications dated June 19, 1989 (e.g., moves & changes).

NON-MAINTENANCE CHARGES \$ _____ per hour, August 1989 - July 1990

NON-MAINTENANCE CHARGES \$ _____ per hour, August 1990 - July 1991

NON-MAINTENANCE CHARGES \$ _____ per hour, August 1991 - July 1992

NON-MAINTENANCE PARTS PRICES WILL BE NEGOTIATED ON AN AS-NEEDED BASIS BY THE DISTRICT, as described in bid specifications dated June 19, 1989.

In submitting this bid, the vendor has agreed to furnish services in the manner prescribed and is affirming that the company meets the specifications noted in the bid specifications dated June 19, 1989.

FIRM NAME _____

ADDRESS, CITY, ZIP _____

BY _____ TITLE _____

DATE _____ TELEPHONE NO. _____

PROOF OF PUBLICATION

(2010, 2015.5 CC)

PROOF OF PUBLICATION OF

INV. TO BID


TELEPHONE

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the city of Riverside, County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 15, 1955, Case Number 54446; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

06/21, 23/1989

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated June 28, 1989
at Riverside, California

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RIV COMM COLLEGE DIST BUSINESS OFC

**INVITATION TO BID - FULL
SERVICE MAINTENANCE -
TELEPHONE EQUIPMENT**

The Riverside Community College District is inviting bids for full service maintenance of its telephone system and all related lines and installations. The current district-owned telephone system is a GTX400. This system is anticipated to be converted to a ROLM 8000 system approximately October 1, 1989.

Detailed specifications may be obtained by contacting Patti Braymer at (714) 684-3240, ext. 220.

Sealed bids will be accepted until 10:00 AM, July 11, 1989, in the office of the Business Manager, Riverside Community College District, 4800 Magnolia Avenue, Riverside, CA 92506-1299, Room 122.

The Board of Trustees reserves the right to reject any or all bids.

BY: Gordon R. Woolley, Jr.
Asst. Supt./Bus. Mgr.

6/21-28

RIVERSIDE COMMUNITY COLLEGE DISTRICT

Report No.: V-F

Date July 18, 1989

Subject: Award of Bid -- Telephone Equipment Maintenance

To the Superintendent:

The telephone maintenance agreement has been a three-year agreement with Telecon, which expires August 31, 1989. An invitation to bid was published in the newspaper and sent to several vendors. However, we received only one response, which is from our current vendor who has provided this service for the past six years. The bid represents a \$275 decrease over the past year. Telecon's work has been very satisfactory and cost effective to the District. This same service provided by the telephone company would be at least twice as expensive.

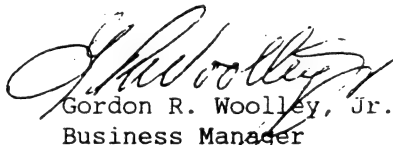
This bid for the next three-year period was unique in that it included maintenance on our current 15-year old phone system as well as the more modern system that has been donated to the District and will be installed this summer.

<u>Bidder</u>	<u>Year</u>	<u>Amount</u>	<u>Hourly</u>
S. K. Telecon, Inc.	1989-90	\$33,000.00	\$ 25.00
	1990-91	36,300.00	26.25
	1991-92	39,500.00	27.50

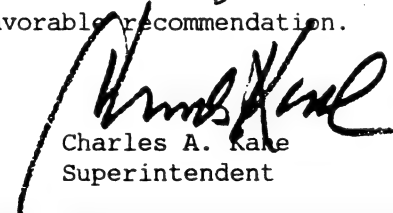
Recommended Action:

It is recommended that the Board of Trustees award the bid for Telephone Equipment Maintenance to Telecon, Inc., as follows: 1989-90 \$33,000, \$25.00/hr.; 1990-91 \$36,300, \$26.25/hr.; 1991-92 \$39,500, \$27.50/hr.; and authorize the Business Manager to sign the agreement.

Submitted by:


Gordon R. Woolley, Jr.
Business Manager

Transmitted to the Board with a favorable recommendation.


Charles A. Kane
Superintendent

Moved by _____

Seconded by _____

Accepted/Approved _____

Yes

No

Not Accepted/Approved _____

Delayed for Further Action _____

Vote: _____

RIVERSIDE COMMUNITY COLLEGE DISTRICT

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4800 MAGNOLIA AVENUE / RIVERSIDE, CALIFORNIA 92506-1299 / (714) 684-3240



BOARD OF TRUSTEES:

Dorothy Gates
Patsy McCoy
Alan Pauw
Mark Takano
Ann Veltum

SUPERINTENDENT/PRESIDENT

Charles A. Kane

RESPONSE TO THE AUDITOR GENERAL'S REPORT

SUBMITTED BY TRUSTEES ALAN D. PAUW AND ANN VELTUM

We cannot and do not support or lend our names to the Response prepared by the RCC Administration and signed by Dorothy Gates as President of the Board of Trustees. Rather than accept the Auditor General's Report and commit to a rigorous review of its findings and recommendations, the authors of the Response try to justify and defend those practices which the Auditor General's Report finds create the greatest risk to the District, and the authors vow not to substantially change direction.

Unfortunately, most of the Response can be reduced to the following rather transparent and self-serving defenses:

1. MAINTAINING THAT THE AUDITOR GENERAL'S REPORT WAS INITIATED FOR POLITICAL REASONS. The Response asserts that political considerations brought on the audit, and any findings should be dismissed as inherently flawed. There is no substantiation for the naked assertion that politics generated the audit. We believe the findings and recommendations of the Auditor General should be analyzed in good faith to see how risk of loss or liability to the District can be reduced.

2. SUGGESTING THAT SOME ALLEGATIONS WERE UNSUPPORTED BY SUFFICIENT EVIDENCE. The Auditor General's Report contains findings and recommendations in six areas, and the Report states that a number of the initial allegations were not pursued for several, different reasons. The fact that a number of allegations made were dismissed by the auditors does not reflect adversely on the Report. Rather, it gives it credibility.

3. STATING CATEGORICALLY THAT THE LEGISLATIVE COUNSEL'S OPINIONS ARE BASED ON FAULTY LEGAL ANALYSIS AS WELL AS BEING INCONSISTENT AND CONTRADICTORY. The RCC Board of Trustees never authorized a comprehensive or even a cursory review of the draft of the Legislative Counsel's opinions by any law firm. The criticisms of the legal opinions voiced by the Legislative Counsel come free of charge to the RCC Administration from those same lawyers who do not represent the RCC Board, but who promoted and supported the Development Corporation. The opinion authored by John W. Francis which is included verbatim in the RCC Administration's Response was not commissioned by the Board of Trustees, nor was the Board informed that it was being prepared on behalf of the District. In fact, Mr. Francis represents the RCC President in personal, legal matters. Mr. Francis does not represent the Board of Trustees.

We deplore attempts by the authors of the Response to denigrate the work of the auditors and the scholarship of the Legislative Counsel. Such combative techniques only serve to deny credibility to the Response, and lend credence to the

criticism that the RCC Administration has no legitimate defense or justification for some of its practices.

A full and realistic response to the Report of the Auditor General necessitates stating that there is, and has been, a difference of opinion within the Board of Trustees of Riverside Community College with respect to the RCCD Development Corporation, the operating policies of the RCC Foundation, and certain administrative practices. We take the position that the Development Corporation and the policies implemented by the Foundation are of questionable legality and essentially ill-advised public policy. We agree with the conclusions and recommendations of the Report and the opinions expressed by the Legislative Counsel's Office. We further believe that the Auditor General's recommendations should be accepted and followed.

We agree with the views stated in the Report that the Development Corporation is very vulnerable to challenge as an "alter ego" of the District and that the 99 year lease between the RCC District and the Development Corporation, as well as the option agreement (Option To Lease) entered into between the Development Corporation and the IDM Corporation, may very well be invalid. It is also our view that the issues relating to the validity of the lease and the option agreement should be analyzed and researched carefully, and we also support returning control and management of District real property directly to the Board of Trustees. We favor retaining objective and experienced counsel to advise the Board as to how to proceed.

The Report recites that the District provided legal opinions from various attorneys supporting the propriety of the establishment of the Development Corporation and the transactions into which it has entered. We have questioned whether adequate and objective legal opinions have been obtained that sufficiently support the course of action followed relative to the Development Corporation.

The firm of Gibson, Dunn and Crutcher, that formed the Development Corporation, specifically disclaimed that it was furnishing legal advice with respect to issues which might exist under the Education Code. It advised the Board that it was only establishing a non-profit corporation, and that the Board was seeking assistance from another attorney with respect to the propriety of the Development Corporation and the requirements of the Education Code.

The attorney to whom Gibson, Dunn and Crutcher was referring furnished the Board with certain letters expressing opinions that related to the Development Corporation. This attorney was employed by another Community College District that was establishing a separate entity to manage and develop real property. Questions existed as to his ability to be objective in advising the RCC Board.

No other legal advice was sought or furnished to the RCC Board when the basic decisions were made to form the Development Corporation.

The Riverside County Counsel's office, referred to in the District's Response, merely prepared the bid documents and the

lease between the District and the Development Corporation. It was only concerned with drafting documents and was not asked to advise the Board on the propriety of the Development Corporation per se. It was undoubtedly assuming that the Board had legal advice with respect to the establishment of the Development Corporation.

The District's Response states that, "The firm of Reid and Hellyer successfully defended the District in the lawsuit challenging the lease process." Very little reliance can be placed upon this case. It was, in reality, aborted because the plaintiffs did not have the funds to litigate effectively.

The District's Response also refers to an opinion of Rutan and Tucker. This opinion was obtained approximately two and a half years after establishment of the Development Corporation. The opinion was not definitive or authoritative.

The Rutan and Tucker opinion includes the following comments:

"We were unable to locate any specific provisions of the Education Code which would expressly authorize the transactions which have occurred to date" (pages 5 and 6).

"A significant question is raised, however, as to whether the Corporation is an alter ego of the District by virtue of the District's control of its Board of Directors and the District's position as a member under the Corporations Code Section 5056 due to its right to select Directors or receive proceeds on

dissolution. If the Corporation is in fact an alter ego of the District, it would be limited to the powers and actions authorized for the District and would be required to comply in all respects with the Education Code." (page 12).

"The transaction could be subject to attack on the basis that the Corporation was acting as the District's agent in the bidding process" (page 14, citing authority).

The Rutan and Tucker opinion was not unqualified in validating the Development Corporation.

The District's Response, in addition, refers to the firm of Thompson and Colegate as having reviewed the Option To Lease between the Development Corporation and IDM Corporation. Thompson and Colegate was concerned with reviewing the Option to Lease, the examination of a document, and not with the propriety of the Development Corporation and considerations arising under the Education Code.


Lawyers for the Development Corporation and lawyers associated with the Development Corporation also gave advise from time to time supportive of it. However, they were in the position of providing arguments to justify it and the transactions upon which it had already embarked. Legal counsel was never retained to objectively advise the RCC Trustees on the possible legal and financial risks for the District.

With respect to the RCC Foundation, we believe, and have asserted in the past, that although the RCC Foundation has not

been designated as an auxiliary organization, it has operated as one for a number of years. We maintain that assets and services paid for with public funds have been furnished to the Foundation outside the direct control of the Trustees. In our view, the District should be reimbursed for the value of assets and services supplied to the Foundation.

In summary, we believe that the conclusions of the Auditor General's Report should be accepted. It is also our opinion that the RCC Board of Trustees has a duty to give the recommendations in the Report careful consideration and determine how they can be implemented.

Dated: May 28, 1991.


Alan D. Pauw
Ann Veltum

Members of the RCC Board of
Trustees

**Comments The Office of the Auditor General's Comments
on the Response From the
Riverside Community College District**

- ① As explained on page 2 of our report, the scope of this audit was limited to reviewing specific allegations. We did not evaluate the district's overall system of internal controls nor its educational programs. Consequently, we cannot speak to the quality of the institution and its overall fiscal responsibility.
- ② To address the district's concern, we revised the table of contents and chapter titles of our report.
- ③ From its response, the district and its attorneys clearly do not understand the function of the Legislative Counsel. Unlike the district's legal advisors, the Legislative Counsel is not an advocate of a particular position. Rather, the Legislative Counsel provides legal interpretations and assists us in understanding the codes. Consequently, in its opinion, the Legislative Counsel discussed various legal issues and how they applied to the district. The district and its attorneys have erroneously interpreted this as contradictory information and flawed analysis.

Further, the Legislative Counsel fully considered the district's legal position on this issue. We gave to the Legislative Counsel all legal opinions provided by the district in support of its leasing arrangements. In addition, in February 1991, we forwarded to the Legislative Counsel a preliminary response from the district that disagreed with the Legislative Counsel's legal opinion and that was similar to the district's response to our audit report. The Legislative Counsel reviewed the district's response but did not change its legal opinion.

- ④ The district is incorrect when it states that the conclusion was based on a misunderstanding of the specifics by the auditor. We based our conclusion on our review of the maintenance agreement and all related bidding documents. As discussed on page 12 of our report, the language in these documents is vague and ambiguous relative to the installation of the new telephone system. In our opinion, because the language in the bidding documents was not clear, potential bidders could not have known that they were bidding on a contract worth more than \$200,000 in the first year, rather than a typical maintenance agreement under which the district paid an average of only \$39,000 in each of the two previous years.
- ⑤ The district is incorrect in its belief that the Education Code does not require it to designate the RCC Foundation as an auxiliary organization. As we indicate on page 15 of our report, the Legislative Counsel based its conclusion in part on the fact that the district significantly increased the activity of the RCC Foundation beginning in 1984. The district has failed to address this point in its response. In March 1991, we forwarded to the Legislative Counsel the district's preliminary response to the opinion. That response disagreed with the Legislative Counsel's opinion and is now included as part of the district's response to our audit report. The Legislative Counsel reviewed the district's response but did not change its legal opinion.
- ⑥ We disagree with the district's assertion that the findings of the report represent a difference of opinion between lawyers but not a violation of law. We believe that it is appropriate to place more weight on the opinion of the Legislative Counsel than on the opinion of the district's legal counsel. Unlike the district's legal counsel, the Legislative Counsel is independent of the district and has not guided the district's decisions regarding the RCCD Development Corporation and the lease arrangement. Based upon the Legislative Counsel's opinion, we concluded that the district trustees improperly delegated to the RCCD Development Corporation their responsibility to control and manage district real property.

- ⑦ The district focuses only on the lease arrangement between the district and the RCCD Development Corporation. However, on pages 8 and 9 of our report, we concluded that the RCCD Development Corporation may not have followed all bidding requirements when it subsequently leased district real property to a private developer. The district failed to address this point in its response.
- ⑧ The district misunderstands the purpose of our recommendation. Our purpose is to have the language in the Education Code clarified to reflect explicitly the Legislature's intent that a district's governing board may not delegate its responsibility to manage district real property. We can see no reason for a district to delegate to a separate corporation its power and responsibility for managing and controlling district real property other than a desire to operate outside of the requirements of the Education Code.
- ⑨ The district misunderstands the intent of our recommendation. We recommend that the RCC Foundation reimburse the district for its use of district facilities and employee services. We do not present any opinion as to the honesty of the RCC Foundation.
- ⑩ The district's assertion that our finding is the exact opposite of the finding of the district's auditors is untrue. In a report dated April 1990, the district's auditors found that the district had allowed nonresident students with outstanding fee balances to enroll and attend classes, contrary to school policy. This finding is consistent with pages 15 and 16 of our report. The district's auditors also found that the district had implemented a student fee collection process that appeared to be in accordance with school policy. Again, this is consistent with page 16 of our report. However, unlike the district's auditors, we tested the district's compliance with the new procedures for the 1990 summer school session, and as discussed on page 16 we found that errors and weaknesses continued to exist.

cc: **Members of the Legislature**
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps